United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7607

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 76-7607, 76-7619

UNIVERSITY HILL FOUNDATION,
Plaintiff-Appellee and Cross-Appellant,

—against—

GOLDMAN, SACHS & CO.,
Defendant-Appellant and Cross-Appellee.

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(71 CIV. 1166 (MEL))

JOINT APPENDIX

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(Continued)

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(In open court)

MR. MANEY: Your Honor, the defendant calls Mr. George E. Doty.

G E O R G E E. D O T Y, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR.MANEY:

Q Mr. Doty, are you a general partner of Goldman, Sachs & Company?

A Yes, sir.

Q You have been one since January 1965?

A Yes, sir.

Q Are you a member of the management committee?

A Yes, sir.

Q Are you what is sometimes referred to as the administrative partner or the managing partner of Goldman Sachs?

A Yes, sir.

Q Would you briefly give us your educational background?

A Starting with the Year One, Blessed Sacrament Academy, Collegiate School, Fordham College, BS, 1938, in accounting, Columbia School of Business, MS, 1939 -- I

think I have that reversed -- it was BS in business administration, MS as accountant.

Q After your graduation from Columbia in 1939, were you then employed?

A Yes, sir.

Q Give us your employment history up to joining Goldman Sachs.

A Price Waterhouse, upon graduation in 1940, General Motors --

THE COURT: What did you do at General Motors, Mr. Doty?

THE WITNESS: I worked as general assistant, treasurer's office, under John Foley and George Russell, Fred Donner, and so forth.

A I was in the Navy from 1942 to, I guess, the end of '45, I guess it was.

THE COURT: I think so.

A Then I was with Richards & Ganley, another accounting firm, from '45 to '47.

I was with Lybrand, Ross Bros. & Montgomery, as it was then known, from '47 to late in '64, when I came over to Goldman Sachs.

Q That firm is now Coopers & Lybrand?

A Yes.

Q Were you during that period a certified public accountant?

A Yes, sir.

Q Did you, during your period at Lybrand, become a senior partner of that firm?

A Yes, sir.

Q Did you enter Goldman Sachs as a partner or become a partner very shortly after entering?

A Yes, sir.

Q What were your responsibilities at Lybrand while you were senior partner at that firm?

A I was responsible, among other things, for their major financially-oriented clients and for the general area, that area in the firm that included investment banking firms, stockbrokers, and generally, banks.

Q Was Goldman Sachs a client of Lybrand at that time?

A Yes, sir.

Q Did you have any responsibility with respect to Lybrand's work for Goldman Sachs?

A Yes, sir. I had been partner in charge of that engagement for a number of years.

Q What were your responsibilities when you joined Goldman Sachs?

A Well, about what they are today, which is -- there are two or three major functions. One is all the operating, the fellows that execute the transactions, keep the office running, communications, that sort of thing, personnel function.

Aside from that, I sort of fill in between the chairs. If there are areas of responsibility that aren't too clearly designated, I probably fill in there, and I try to coordinate the partners to make sure the bases are covered.

It's rather hard to define. It's just a general administrative thing of making sure the firm functions. My exposure is inward. I'm the fellow in the firm -- I used to be the only fellow in the firm who was really concerned with its internal operations as opposed to functioning in some client-oriented matter.

MR. ARONSON: Your Honor, I take it we're limiting all these descriptions of his duties to the time prior to March 13th, on or about, from the year '68 through March 13th; is that correct?

MR. MANEY: I think Mr. Doty's testimony was that his duties hadn't changed substantially from '65 to the present.

THE COURT: The relevance of it, however, I guess,

is related to the period in this case.

Q Mr. Doty, are you also a trustee of Fordham University?

A Yes, sir.

Q Are you trustee of the Collegiate School?

A Yes, I'm president of the board.

Q Are you a member of the American Institute of Certified Public Accountants?

A Yes, sir.

Q Are you or were you a director of that institute?

A I just finished my three-year term this month.

Q As Mr. Aronson mentioned, all the questions that I will direct to you will be within a time frame of 1968, 1969 and 1970, up through early March; is that clear?

A Yes, sir.

Q Unless I mention another time.

During that time frame,did you have any responsibility with respect to the commercial paper department?

A Yes. Of course, we provided all of the services that they need, communications, office people. We also -- people under my direction operate what's called the note and discount department, which executes their transactions, receives, delivers, pays, so forth.

Also the responsibility of people who report to me is in the financing of the firm's inventories, which would include commercial paper.

I may also have had some other sort of monitoring type responsibilities of controlling the magnitude of their inventories -- not particular names, but in the total that we were capable of financing.

Q Did Goldman Sachs, during this period, finance inventory other than commercial paper?

A Yes, sir. We have, you know, a general securities business, and have large other inventories to finance.

Q What other kinds of securities?

A Corporate bonds, stocks, government securities, municipal bonds, certificates of deposit -- you name it -- commodities, occasionally, spot commodities, that is. Whatever instruments are really being sold.

Q During, let's say, early 1970, do you have an idea of the dollar volume being inventoried by Goldman Sachs?

THE COURT: Total inventory?

Q Total inventory.

A If you are getting at financing, because we finance things that are not in our ventory, for instance, customer securities that are purchased and not paid for,

financing would run, oh, 3 to 5 hundred million dollars regularly. It may be over that sometimes. It would rarely have been under it.

I'd say, if you wanted an average, we borrowed about 400-odd million dollars a day.

Q Did you coordinate the financing of all these securities?

A Yes, sir.

Q How were these securities financed?

MR. ARONSON: Your Honor, could we just limit this to financing of commercial paper? I don't see the relevance of financing of other securities in this case.

MR. MANEY: Your Honor, let me ask a couple of questions.

Q Mr. Doty, were you going to financial institutions to obtain loans for financing commercial paper?

A Yes, sir.

Q Were you going to those same institutions to finance other securities?

A Yes, sir.

Q Was a credit being used out of Goldman, Sachs & Company as a partnership?

A Yes, sir.

Q For all the securities?

A Yes, sir.

MR. MANEY: Your Honor, I think the nature of financing all securities as a single entity whose credit is at stake is relevant.

THE COURT: Assuming -- and I'm not deciding -- that the question of financing securities is relevant, then I have to know how it was done. If it was done as a unit, it was done as a unit.

Q How were these securities financed?

A Well, the major part of our inventories were financed with banks in two groups. The money market instruments, which included commercial paper, Fanny Mae, that is, Federal National Mortgage Association notes, and certificates of deposit, and similar items, would be financed with those banks which were willing to do it at a dealer rate, what is known as a government dealer rate, which normally is more attractive than the broker rate. It may, and it was in this period of time sometimes less attractive, but there's a group of banks who would lend us in that direction, either the same banks or other banks. We would borrow on corporate securities, and so forth, at what is known as a broker rate, which relates much more clesely to the prime rate.

We also financed a number of things on repos --

repurchase agreements -- pardon me -- with corporate treasurers or with, sometimes, banks who found it more convenient to do it that way.

Those repos were done normally in relation to the government dealer rate. All of the things, borrowing from the banks, had to fall inside of what they, the banks, term their legal limit. Since none of these were government -- rather, not none, but very little were government securities, in borrowing from a bank, we have to stay inside of their legal limit, assuming they're willing to lend us that much.

When I say "legal limit," I'm not making like a lawyer, your Honor, because actually what they call legal limit in the banks is not what the lawyer would define as the legal limit. It's sort of a working rule of thumb that they use.

Q Mr. Doty, what kind of loans were these?

A Overnight loans. Most of our loans, and almost entirely, all the loans with banks were overnight. They come due the next morning.

It doesn't mean that they will necessarily be paid off, but the bank is entitled to be paid off the next morning, and the rate is whatever rate prevails for that time frame. You can call it demand, or what have you, but it is

properly called overnight loans.

There is another group of loans which is called day loans, which we also borrowed from these same people, in which the collateral is less practical to identify. They tend to have a certain unsecured character, because it's so hard to follow the proceeds, in a business where you are moving things around, but the difference in rate in day loans would be say, 1 percent; in the overnight loan it's the regular rate.

Q Were these loans collateralized?

A All loans at night are collateralized. All overnight loans are collateralized, all of our loans.

Q And the collateral would be the securities that you were financing; is that right?

A Yes, sir.

Q What was the extent of Goldman Sachs bank lines at the time?

A We had no lines.

Q Well --

A Could I take exception to that? There may have been a couple of guys at times who wrote us letters saying, you know, in the solicitation of business, that "glad to know that we have open a line for you," but in the normal sense, we had no bank lines in this whole time frame.

Q Do you remember, Mr. Doty, whether the last quarter of 1969, first couple of months of 1970, do you remember, in terms of the money market, what kind of period that was?

A It was damn tight -- pardon me -- it was very tight.

Q Did Goldman Sachs encounter any difficulty in getting loans without lines during that period?

A No, sir.

When you say "any difficulty," you always -- there are some banks which are at any one day or period more conveniently set up than others, but, no, we didn't. We went in to borrow and we were lent money.

Q Do you know whether during a tight money period there is any difference between the willingness of banks to extend lines or to grant loans?

A Well, they always prefer to -- "always" is a big word, but the preference in banks, particularly in time, in crunch times, in tight money times, is to lend. A line is just a call on them, which can be used to the borrower's advantage, and we notice in all of these crunch periods that the banks tend to chase their borrowers with or without lines into our market, so that the economics of it work against a bank.

If he lends you, he knows what he's earning, he knows what his problem is, and he commits the funds, and he gets the return that he desires to have.

In the line business, he is not getting the full leverage on his money. It's always our practice -- it's always been -- that it's cheaper and more effective for us; we have never had any trouble borrowing the money, and when you go in with a specific piece of business at a particular moment, they'll lend it to you, if they think the credit is acceptable credit.

Q Mr. Doty, you were borrowing, say, between 3 and 5 hundred million dollars a day. In early 1970, what was the partnership capital of Goldman Sachs?

A Oh, I think it was in the low 40 millions, about, maybe, 40 to 45 million dollars.

Q Speaking of commercial paper now, the commercial paper being financed was earning interest, was it not?

A Yes, sir.

Q In relation to the cost of financing that paper, do you recall whether you were paying more or less to finance than you were earning during this '69-early 1970 period?

A It was a good-sized negative spread, which means it was costing more to borrow than we were earning on the

inventory.

Q Do you remember how rates, commercial paper rates --

THE COURT: You are talking now about commercial paper or all of your --

THE WITNESS: Really, your HOnor, on the customers' securities we are not earning anything except the commissions, so that is just an overhead cost. On our own inventories --

THE COURT: I was talking about your inventory.

THE WITNESS: Well, you see, our own inventories are largely, in that time frame were largely equities, so they weren't yielding, so it was costing.

The commercial paper, where you normally hoped that you were going to have a small black carry, you are not going to make a lot of money on that, had turned into crunch periods. You see, we have to borrow the money, we don't have any alternative, at whatever rate the bank or the federal funds -- and, if you recall the period they're talking about, it was keyed to the Uero Dollar rate, and it would have got into sometimes very large percentages.

We don't have the laternative. We have got to go in, if we have the inventory, we have to borrow the damn thing, so we paid what they asked, and what they asked was more than what we were capable of asking our issuers.

THE COURT: Right.

Q Incidentally, if commercial paper rates were going down, would the commercial paper department make a substantial profit by holding paper in inventory?

A Well, you could make a theory of that, but the practice that when rates are going down, it's visible to everybody, the investors tend to buy what you have, and the issuers tend to tell you, "Well, I don't need it right away, and I will come to market in a little while," and so on the way down. When rates are improving, you always seem to, and I'm sure our statistics would bear it out, have much less inventory.

Right now, I shouldn't say that, but in times like now, when rates are obviously turning down, I think if you look at our inventory, you will find it was very low. When rates are going the other way, the borrowers decide that they would like to get their money now, and so they come in to you, but the investors figure they've got nothing to lose by waiting another day or whatever it is, and so they keep the money out short, and so you have this constant problem, which I'm sure was manifest in our figures in the period described here.

Q During this time period, did any of the banks -- I take it you were financing through banks?

A Yes.

Q Did any of these banks place any limit on the amount of commercial paper that they would carry of any one issuer as collateral for these loans?

A Yes, sir.

Q Do you recall whether Penn Central was one of those issuers?

A Well, all our names would have been.

What some of the banks did was, say, they'd take no more than 10 million of a single name, or 5 million of lower names, or 3 million or 1 million. Penn Central was always in the top caption, whatever it was, but if there was a limit on a name, they would be subject to a limit on the name.

THE COURT: By a top caption, you mean it would have the highest limit?

THE WITNESS: Yes, the big names, the credits the banks really knew, they would give you a bigger limit on.

Q Is it fair to say that you were borrowing from most of the major New York banks?

A On one instrument or another, we were borrowing from, yes, sir, most of them, and Chicago.

Q During this period, was there a limit on the total amount of inventory the commercial paper department

was permitted to carry?

A Yes, sir, we applied a limit of $250 million and if they had any reason to go over that, they had to come with their hat in their hand and see me.

THE COURT: That was the management committee that made that ruling, or who?

THE WITNESS: Well, I probably made it, your Honor, and the management committee blessed it for me, just so in case there were -- you know, these fellows might not have been exactly ecstatic at the idea of having limits placed on them, and I think I got the management committee to bless it, but in practice, the application of it was something that was dealing between me and the fellows up there.

Q Mr. Doty, do you recall there was a meeting of the full partnership in the fall of 1969?

A Yes, sir.

Q Do you recall a meeting at Sterling Forest, New York?

A Yes, sir.

Q When did that take place?

A That was almost exactly now, it was Halloween, All Saints Day, and the next day, 1969. I guess you know, as a matter of fact, it's exactly this same situation. I

think it was a Friday and a Saturday, but it may have been a Saturday and a Sunday.

Q Do you know what caused or what was the reason for having that meeting?

A Yes. Sidney Weinberg, who had been the senior partner of the firm for quite a few years, died in July 1969, and we thought it would be desirable to get the partnership together, away from the hurly-burly of our business, and just talk out things and make sure that we all got our views coordinated; if there were a party line, that everybody got to know what it was, and that the management committee was anxious to make sure we heard from all of the partners and were reflecting their views on the management of the firm.

THE COURT: Approximately how many partners were there then?

THE WITNESS: Your Honor, '69, I'd say there were about forty.

Q Do you recall whether there was any discussion about the commercial paper department at that meeting?

A There was. There was considerable discussion.

Q Do you recall the general substance of that discussion?

A Yes. There was some unhappiness on the part

of a number of the partners in their feeling that we were committing too much talent, time and resources to the commercial paper department, and that in the overall scheme of things, it wasn't profitable enough to make it worthy of that much effort.

Q Mr. Doty, I show you a document, PX 75 in evidence, and ask if you know what this document is.

A Yes, sir, I do.

Q What is it?

A It was an analysis prepared by the commercial paper department with some assistance by one or more of my fellows in proposing a number of possible courses of action which presumably would have the effect of making the department more profitable.

(Continued on next page)

THE COURT: Was the idea for this study originated at the meeting? Is there a connection?

THE WITNESS: Yes, there is a connection, your Honor. Actually, it starts back a little longer than that. In about the beginning of '69, I think, we were trying to predict with greater accuracy what our financing requirements are. I had a fellow named Hy Weinberg who has since become our controller and partner, who was assigned this job, because with the amount of borrowing we had to do we were finding out too late in the day, and it was not being done as economically as we could.

So Weinberg started working on this. In the course of doing this, he developed a lot of information on computers which became then known to the commercial paper department. I don't think we knew with quite such precision where the money was made and just how slow the inventory was.

So when Bob Wilson, who was in charge and is in charge of the commercial paper department, got a few lashes up at Sterling Forest, that sort of charged him off in this direction, and there is a connection because it was his reaction to what might be called a stinging, and in some ways, in my judgment, a fair criticism.

Anyway, that was his reaction.

Q Would you turn to the first page? It contains a list of authors. It says one or more of your people worked on this.

A The only one whose name appears here is Hy Weinberg. This computer work and stuff had to be done by Weinberg.

Q I think you mentioned Mr. Weinberg provided some data.

I show you Exhibit FA for identification and ask if you can tell me what this document is.

A This is an analysis of the commercial paper inventory as of a day to ascertain what the age of it was, how long we had owned it.

Q Of what significance is aging?

THE COURT: I know that. I am getting older myself.

MR. MANEY: With reference to inventory.

THE COURT: I know about the inventory. However, you may wish to make a statement. It is like any other inventory. When you hold it too long, it is too expensive to hold it.,

THE WITNESS: It is a mechanical problem. We had this stuff in inventory. I guess we were attempting to prove something here.

When you have something in inventory, the mechanics in the commercial paper business are dreadful. You have to buy, pay for, receive, examine, deliver, get paid for, and then use that money. When you have it in inventory, you have another complication, that you have it somewhere in a loan, and you have to go and either substitute collateral to get that -- first, you have to find out where it is. Then you have to go get it and go through the same routine.

The net result is, the point I think we were trying to prove to the fellows, was that when you get it into inventory it stays in inventory, because your salesmen wouldn't sell it because it's too hard for them to rely on a telephone call and be able to emit to the buyer that they will actually get that paper.

I think that was the background of this.

Q Would aging have any effect on inventory in a rising rate market?

A Of course. You but it at a rate which is the prevailing buying rate at a certain prevailing interest rate. As the interest rate goes up, so is your buying rate, which means your price would go down, which means you lost money on inventory by having it there during a rising period.

The loss is two ways. You lost it on the carry,

and then you would lose it when you went to sell the paper because the market has moved away from it.

MR. MANEY: Your Honor, I offer Exhibit FA in evidence.

MR. ARONSON: No objection.

THE COURT: Received in evidence.

(Defendant's Exhibit FA was received in evidence.)

Q I show you Exhibit CV for identification.

MR. MANEY: Your Honor, I am not going to offer this exhibit in evidence. Perhaps I can explain what it is.

There is a document CU in evidence, a computer run, which reflects each of these transactions in Penn Central.

THE COURT: I remember.

MR. MANEY: CV is a printout requesting that same data bank to repeat the names of the purchasers from the latest date going backwards, but doing them only once. So that if a particular entity purchased on March 13th, it would be printed out for that date. If that same entity purchased in February, it would be omitted. So this would be a list giving each of the names just once of those entities.

Q Mr. Doty, with Exhibit CV for identification in front of you, which lists the purchasers of Penn Central

commercial paper during this period, did you at my request review that list to determine if it contained banks from which Goldman Sachs borrowed during this period, and if it contains other clients of Goldman Sachs other than purchasing commercial paper?

A Yes, sir.

Q Without mentioning all of them, but selecting some of the more notable or big ones, could you give us some of the names?

A Yes, sir. Looking down this list --

MR. ARONSON: Excuse me. We will stipulate that on that list there are banks that did business with Goldman Sachs and also from which Goldman Sachs borrowed.

We will also stipulate there are people on that list who are customers of Goldman Sachs.

THE COURT: Are you trying to give me the quality of the purchaser?

MR. MANEY: The purpose of this line of inquiry is to establish that the entities listed that purchased Penn Central commercial paper from Goldman Sachs were far more important clients of Goldman Sachs, that in fact there were banks that Goldman Sachs relied on for their very existence, which makes it totally insignificant to the income received from Penn Central.

It really goes to the question of motive, would Goldman Sachs have been trying to pick up this great, lucrative Penn Central business for the company,which is going into bankruptcy, by pawning off these defective goods on its best customers, its best friends.

The question is the magnitude of the relationship.

THE COURT: I agree, to the extent that motive is a factor in the case, and it may be.

A Hueblein is an investment banking client of ours.

THE COURT: Hueblein?

THE WITNESS: Yes, sir.

A American Express was doing some financing for us.

Chemical Bank is a major resource for us. They lent us money on paper, they lent us money on securities. We handled a lot of our operating accounts through them. I think in the time frame they probably did about $300,000 a year of brokerage business with us.

I am going to skip, if I may, a lot of this. These are all customers of ours.

Borg Warner is one of our larger commercial paper accounts, has been for many years. It's an investment banking client.

The New York State Teachers is a large bond buyer.

THE COURT: Yes.

THE WITNESS: I'm sorry.

A Insurance Securities Trust, which is the third item on the next page, was one of our very large brokerage customers at the time. I think their business probably ran about -- well, certainly over $500,000 brokerage during that period.

THE COURT: Which one was that?

THE WITNESS: Insurance Security Trust. It's out on the coast, your Honor. It is not a happy situation these days.

A Manufacturers Hanover is very important to us. That was, I think, in terms of brokerage business -- I could be a little off, but I'd say it was around half a million dollars a year. I might be $100,000 off. It might be $400,000.

Textron, I think at the time.

U. S. Trust Company down there has been a major account of ours. During the time frame, it certainly was over $500,000 a year brokerage business.

The Mellon National Bank & Trust Company was within the first five of our most important accounts. It was the largest account by far in our Philadelphia office. I think we did about a million dollars a year brokerage

business with them.

Skipping down here, United California Bank, our offices were in their building. Investment bankers for the parent company.

Wells Fargo is an important resource for us in San Francisco.

First National Bank, which is not listed, I am pretty sure that is First National Bank of St. Louis, and its related trust company, St. Louis Union, are by far the largest customers of our St. Louis office. I don't know the exact amount now. It is 5 or 6 hundred thousand a year, maybe a little more some of those years, in brokerage business.

The First National Bank of Boston, which I think the trust there is Old Colony Trust, in Boston are the largest accounts, are mutual funds. That would be the largest account. That would be in the same area, $500,000.

THE WITNESS: Your Honor, I could be a little off in those numbers. That is the basic general magnitude.

Q I think that's enough as examples. There are others on that list?

A Oh, yes, sir. I see there are others.

Q With respect to that, I show you Exhibits FB and FC for identification.

Would you identify those documents for me, Mr. Doty?

A Yes.

FB is a tabulation of the gross commissions from Penn Central and affiliated companies during the years '68, '9 and '70, showing information on a quarterly basis, and FC is the same time period for -- it isn't commissions. This is the spread on sales of underwritten securities.

Q Were these figures appearing on these two exhibits prepared by persons in Goldman Sachs at your request?

A Yes, sir.

Q To your knowledge, are the figures reflected in Exhibits FB and FC for identification the total revenue by Goldman Sachs from Penn Central, other than what was obtained by the sale of commercial paper during this period?

A Yes, sir, to our best information and belief.

MR. MANEY: I offer Exhibits FB and FC into evidence.

MR. ARONSON: May I have one moment, if your Honor please?

THE COURT: Yes.

Are those figures in thousands?

THE WITNESS: No. I wish they were. That is $700, the first one. That's why we had so much trouble

finding them.

THE COURT: It seems large when this is thousands and it seems small when it isn't.

VOIR DIRE EXAMINATION

BY MR. ARONSON:

Q Does Defendant's Exhibit FB for identification list all the affiliated companies of Penn Central with which Goldman Sachs did any business?

A I think so, yes, sir.

Q But you don't know?

A We looked for them all.

Q You did look for them all?

A Yes, we looked for them all.

Q To the best of your knowledge, is this all of them?

A Yes, sir.

Q Gross commissions, does that include the securities as well as the commercial paper business?

A There is no commercial paper in here, sir. This is just securities.

MR. ARONSON: No objection.

THE COURT: Why isn't there commercial paper in there?

THE WITNESS: There is a separate exhibit.

THE COURT: Is that the FC?

THE WITNESS: No.

THE COURT: Are you going at it piece by piece?

MR. MANEY: The sales of commercial paper could be obtained by reference to Exhibit CU, the buying and selling for each piece of paper. It has not been separately calculated as a gross figure. It could be.

DIRECT EXAMINATION CONTINUED

BY MR. MANEY:

Q Would it be possible to compute a net figure for a particular issuer?

THE COURT: I want to be sure I understand what you are trying to tell me.

I can see the amount made or not made on other services performed for Penn Central is relevant, at least in answer to an argument that might be made you were trying to keep Penn Central's favor by selling their commercial paper, but I should also think that the amount you made from commercial paper would be relevant.

MR. MANEY: That is in evidence, not separately tabulated as such.

THE COURT: Where is it? CU or what?

MR. BREINDEL: It is in Plaintiff's Exhibit 75 for 1968 and 1969.

MR. MANEY: For the total commercial paper department. I am speaking of Penn Central, gross profit or loss on Penn Central.

THE COURT: Right.

MR. MANEY: That is the Court's question. that can be tabulated from Exhibit CU, I believe.

THE COURT: I am not asking you to do anything one way or another, although I think if this line is to be presented to me, it would make sense for that aspect of it to be presented, too, since this case involves commercial paper and not to other things.

MR. MANEY: It is claimed that the commercial paper department continued to handle an uncreditworthy company in order to incur or to curry the favor of Penn Central because of this other lucrative business. We are trying to show how lucrative.

THE COURT: How about the commercial paper itself? Supposing that were lucrative to you but not to the issuer or the buyer? I am not ignorant as to whether it is claimed it was lucrative, but I thought it was.

MR. BREINDEL: If I could, there is no claim made here that Goldman Sachs continued to sell Penn Central commercial paper because it wanted to get its other business. Our claim is that because it was getting this other business

its judgment was clouded as to the viability of Penn Central's commercial paper.

THE COURT: If we are talking only in terms, as both parties are, of other business, I see why those figures were presented and I do think, on either score, Mr. Breindel, the scope of that other business or its profitability is relevant.

The exhibits are received in evidence.

(Defendant's Exhibits FB and FC were received in evidence.)

MR. MANEY: No further questions.

THE COURT: Mr. Aronson, will you be examining?

MR. ARONSON: Yes.

CROSS-EXAMINATION

BY MR. ARONSON:

Q Mr. Doty, during the period 1968 through March 13, 1970,did Mr. Levy ever discuss Penn Central at a management committee meeting?

A I don't think so, no, sir.

Q During the period 1968 through March 13, 1970, did the management committee discuss or review the credit analysis procedures of the credit department at Goldman Sachs?

A As a group we did not.

Q Did you personally discuss Goldman Sachs' sale of Penn Central commercial paper with anyone from Goldman Sachs during the period I just mentioned?

A I have no recollection of it. I doubt it.

Q You have no recollection?

A I have no recollection of it.

Q Did you discuss the sale of Penn Central's commercial paper with any financial officers from Penn Central?

A No, sir.

Q During the period 1968 through March 13, 1970, did you read any blue sheets or internal memoranda of Goldman Sachs which concerned the financial status of Penn Central?

A I'd have to say that if my initials are not on the blue sheets, then I probably did not read them.

I have no recollection of sending for that file, so I'd have to respond that to the best of my recollection the answer is no, I did not read it.

Q In connection with the loans from the banks to which you testified which financed Goldman Sachs' commercial paper inventory, did any bank ever refuse to accept the commercial paper of any issuer as collateral for the commercial paper inventory loans during the period I just mentioned?

A I believe there was one situation in which a bank asked us not to use a particular name. It was a name that they just didn't want us to send over.

THE COURT: Was that a question of financial standing?

THE WITNESS: Later it was clarified, your Honor. This is something that was called to my attention after my testimony on an earlier case.

THE COURT: What number case is this for you, Mr. Doty?

THE WITNESS: It's whatever number we have had, your Honor.

THE COURT: You people are really traveling the circuit, aren't you?

THE WITNESS: We are trying to get these things behind us, get it resolved.

THE COURT: Of course.

THE WITNESS: In that situation, the bank was the Chase Bank.

THE COURT: I don't want the name of the company.

THE WITNESS: The paper was a finance company subsidiary of something, and I don't know exactly why they got their wires crossed, but we were only concerned because if there was something wrong with it --

THE COURT: You wanted to know.

THE WITNESS: Yes.

It developed that they didn't have the right documents in the right files. I am trying to be absolutely precise in my answer.

A That is the only case I know of.

What we did is adjust to whatever the bank said. We gave them a list of our names and whatever they wanted is what we sent them. But I would have taken a very dim view of a bank rejecting a name that we had in our inventory when we sent it over to them, unless there was some earlier understanding on our part that there was some reason. The bank would fully loan up on a name.

Banks have different problems because they have different law firms.

Q In any event, was this only one instance?

A That's all.

Q This was a finance company?

A Yes, sir.

Q Approximately how many issuers, or commercial paper of issuers, did you inventory or did you use as collateral for these loans?

A I can't respond to that. If you have an inventory list around, one of those daily lists that we had, we would

have been financing them all.

Q How did it come to your knowledge that this bank rejected this finance company as collateral?

A The first thing a bank does, someone calls me.

Q Who? From the bank directly?

A No. I have a money management department who arrange loans. It's sort of broken down. They decide the banks at which we will borrow and the discount department sets up the loans.

When they had anything out of the ordinary, I don't remember who called me, but it would probably be Mr. Geiger, who is the vice-president in charge of that area of our business.

It's a serious development. It's very unusual. The game I'm in is not have banks making restrictions on us. We react to any restriction or change a bank makes that tends to inhibit our ability to operate.

Q I believe you testified that the commercial paper inventory loans were in fact collateralized by the general credit of Goldman Sachs, the partnership; is that correct?

A They were not collateralized by that. They are collaterialized by the commercial paper itself.

Q In the event the commercial paper is insufficient collateral, don't the banks have recourse to the general

partnership of Goldman Sachs?

A Absolutely.

THE COURT: Is that the way it works, or are you the primary obligators and they go against the collateral which you then pay? It is a matter of curiosity.

THE WITNESS: That's right. They never expect to realize the collateral. They wouldn't lend it to us if they did.

If I perceive the question, it is was there some support behind the collateral we put up.

THE COURT: It is even greater that Mr. Aronson indicates. You are the borrower?

THE WITNESS: Absolutely. Banks wouldn't lend us a nickel if they thought they had to realize on the collateral.

Q On any one collateral, is that right?

A I think that it's probably right.

A hock shop expects, I think, to liquidate the collateral, but a bank dealing with us does not.

Q Isn't that generally true for banks in connection with all types of loans?

A I think a lender does not want to liquidate collateral. You are saying so many things. Mortgage loans, and there are so many variations, I couldn't respond to that.

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THE COURT: I guess you could argue generally it is true.

First of all, it is expensive. Secondly of all, the value is uncertain. Thirdly, it creates hard feelings.

I suppose you might have a beautiful piece of property that appreciated enormously in value, but that doesn't do you much good, because you can only get back what you have loaned; is that right? The lender can't come out getting the appreciation.

THE WITNESS: Your Honor, if you say that I will believe it. I'm not sure. It depends on how it gets bid on at the auction.

In substance I agree with you, yes. I would agree with the counselor here that banks lending look to the credit of the borrower first, I believe, and collateral is the second thing that they look to, and certainly in lending to our firm, they expect to be paid in money and not to have to liquidate the collateral.

Q In addition to the capitalization of Goldman Sachs, could recourse also be had to the general partners of Goldman Sachs?

A Yes, sir.

Q Their individual assets?

A Yes, sir.

Q I believe we were discussing loans, what you called overnight loans.

That was another way of financing, wasn't it, a repurchasing agreement?

A Yes.

Q In those repurchasing agreement situations, the recourse was directly against Goldman Sachs again, wasn't that true? There was no collateral in those situations?

A There is collateral. There is the same collateral as in a regular loan.

Yes, there is recourse. We agree to buy it back so we agree to buy it back. There are no ifs, ands or buts about it. If we don't do it, we are all liable.

Q You are liable?

A Yes.

THE COURT: I am confused as to how these repurchase agreements relate to bank loans. Do they?

THE WITNESS: Your Honor, they only relate in some banks. Most repurchase agreements in commercial paper are with corporate treasurers.

THE COURT: I can understand that.

THE WITNESS: Some banks have legal opinions that if they do repurchase agreement from us, they can lend us on each name, in effect, because of the purchase and sale,

an amount which in total is larger than their legal number.

My grammar is wrong, but if they get ten names, they lend you $5 million on each one, whereas they might only be able to lend you $20 million just on your own credit because of the legal limit.

But a repurchase agreement,what you do is you sell it and deliver it just as if you sold anything else, and you get paid and your agreement is to buy it back the next day or two or three days, and then he delivers it to you and you pay him.

THE COURT: In other words, it is a put?

THE WITNESS: It is not an option. It is a firm agreement. There may be some option on dates occasionally, but in the time frame involved here there was not.

Q In repurchasing agreements, you agree to sell at the same time they agree to purchase?

A We do sell.

Q You agree to repurchase at the same time that they agree to purchase?

A Absolutely.

Q To repay the bank or whoever the purchaser is?

A Yes, sir.

Q By carrying commercial paper in inventory, didn't Goldman Sachs assume the risk to the extent the commercial

paper might not be paid upon maturity?

A Sure.

Q And the risk could be eliminated by eliminating inventory, isn't that correct?

A Sure.

(Continued on next page)

Q Did Goldman Sachs, in its maintenance of an inventory of commercial paper, benefit the issuer of that commercial paper?

THE COURT: Will you state that again, please.

Q Did Goldman Sachs' maintenance of an inventory of commercial paper benefit the issuer of their commercial paper?

A Oh, yes, it did, sir, because if he used us as a source of funds, he didn't have to maintain deposits or activate bank lines. It's cheaper for him. So when he put it in us rather than a bank, it was advantageous to him, yes.

Q Were these benefits that you have just described to the issuer utilized as a marketing device for obtaining issuers?

A I can't respond to that. Mr. Wilson would have to say. We have always, as a managerial thing -- I'm talking now as a member of the management committee, and taking the position that we do not want to inventory paper for any other purpose than to sell it -- we are not interested in being an investor in paper, and so that when you say as a marketing tool, I think if Mr. Wilson hasn't testified, he can, he'd have to say the fact that you would hope to keep outstanding a certain amount of paper is certainly an

inducement to an issuer to use you rather than go someplace else.

Q It was an inducement?

A You know, I don't want to summarize it --

THE COURT: I think you have answered it, Mr. Doty, as well as you can, which is very well.

Q During the period 1968 through March 1970, was it your opinion, in general, that it was important to handle the commercial paper business of an issuer to obtain other business for Goldman Sachs from that issuer?

A No, sir, not the way you describe that. You say in order to?

Q Yes.

A No, sir.

Q Mr. Doty, do you recall testifying at a deposition on or about February 2, 1972, in connection with the Penn Central consolidation?

A I'm sure --

THE COURT: You can't remember the date but you remember the occasion?

THE WITNESS: Right, sir.

Q Do you recall the following questions and answers that were put to you, which you answered, Page 43:

"Q Did Goldman, Sachs & Co. consider that it was

important to maintain their commercial paper activity for the furtherance of other business opportunities?

"A I don't think I can respond to that in terms of Goldman, Sachs & Co. There were varying opinions.

"Q Can you identify those partners who believed that continuing commercial paper activity was valuable to the furtherance of other business opportunities?

"A I did, in the general concept of our, of what we were doing. It's not important enough to take losses. Personally, I thought it was useful. I can't speak for the others. I don't know that we ever articulated on that subject."

Do you recall giving that testimony?

A I would give that today, yes, sir.

Q How does that vary from your former answer that you just gave?

A I think you have to analyze it yourself. The question was different.

MR.MANEY: Objection, your Honor. The witness says it's not inconsistent. They're two different questions.

THE COURT: They're certainly not identical. Do you want to tell me, in your own words now, what your attitude is to the value to Goldman Sachs of maintaining commercial paper business in relation to getting other kinds

of business?

THE WITNESS: Well, yes, sir.

It was a service that if we rendered it well showed us in a good light to a client, and was very useful in enhancing our image as investment bankers, in that it's very much the same as when we price a new issue right on the market, and it trades afterwards just about where you like it to trade. It's very helpful in furthering your general activities.

Whether you would -- I thought the implication of what was said was would you recommend doing that in order to -- for something else. I'd recommend doing it because there's money made in it, commercial paper was a profitable thing with us, and I think I may have said somewhere there, not take losses at it, but it's useful, it's a useful thing, yes, sir.

If I said something earlier that seemed not to conform to that, I'd like to retract it, because that's what I think.

Q In connection with the blue book, which is Plaintiff's Exhibit 75, I think you have it before you, isn't it a fact that the management committee as a whole did not arrive at a decision regarding its recommendations?

A We articulated no decision. What we, I think,

gave them to understand was that the general line that they wanted to go was agreeable, don't rock the boat, don't lose all your customers.

We didn't bless any particular line or any of these alternatives he had in here. They were already started going down that route, and we -- that was agreeable, but we didn't want to get in a position where we gave them a license to shoot all our customers.

So if your question is, did we formalize a decision, the answer is no, we did not.

Q Mr. Doty, I show you Plaintiff's Exhibit 78, which I believe is in evidence.

Have you ever seen Plaintiff's Exhibit 78 before?

A Yes, sir.

THE COURT: I can't tell from these numbers. 78?

MR. ARONSON: Yes, October 1, 1969, memo to the National Committee --

MR. MANEY: This is an extract. This is not the complete minute.

MR. ARONSON: Do you have a complete one?

MR. MANEY: Not here.

MR. BREINDEL: It's an extract furnished by Goldman Sachs.

MR. MANEY: Anything relating to commercial paper

on the minutes of that meeting was produced.

THE COURT: Was extracted?

MR. MANEY: Extracted and produced to counsel. Between Item 1 and the signature lines were other items which have been deleted.

THE COURT: All right. That doesn't mean that what's here isn't admissible or discussable.

MR. MANEY: I believe it's in evidence, the exhibit.

THE COURT: What was the question? Sorry.

MR. ARONSON: I don't believe there was a question. I'm getting to it.

THE COURT: I see.

Q Plaintiff's Exhibit 78 indicates, Mr.Doty, that there was an instruction given to the commercial paper department, is that correct?

A Yes, sir.

Q Can you tell me what that instruction meant?

A I think I can. I believe at my initiative the management committee confirmed a limit on commercial paper of $250 million, and the new business partners -- I'd have to tell you, this is an explanation given to me when I returned, because I was, I think, traveling around the world at that time, and Ray Young, who is one of the other

members on the management committee, makes minutes when I'm not there to do that: They were concerned that Bob would take advantage of that limit to turn down some purchase from some client and embarrass the new business partners because I was away, the guy that normally gave them the waivers on inventory was away, and he might take a more agressive action.

Q Who was that guy -- the waivers --

A I'm sorry. I got the vernacular caught up here. The $250 million limit, if they wanted to go over it, they normally would come see me. Bob Wilson would come down and explain, it was September 15th, you know, the usual things of why it is that it wasn't enough. And I was away in this period. But we had confirmed a $250 million working limit for them, and my recollection is that I was told the background of this, there was some concern that with that limit there that somewhere in the commercial, and no ready relief valve, that someone would turn down a good client on the basis that we had no room for his inventory, and they didn't want it to happen without first checking with someone in the management committee who would put some weight on my money management group to find space for it to be inventory.

But I'd have to say to you that, well, as I have

said, I really wasn't there, but that's my understanding of what that meant.

When I got back, you know, they saved that for me and I inquired what it meant.

Q It was based on a discussion with Mr. Young who is a member of the management committee?

A I would say yes to that.

Q So the purpose of the mema related to insuring the commercial paper department wouldn't turn away any new issuers because --

A I don't think that's -- maybe that's what it meant, but that wasn't my recollection. That is not my recollection.

I don't think it had to do with new issuers. I think it had to do with purchasers, current purchasers from existing issuers. Did someone testify that it was new issuers? I don't think so.

Q I don't know. I'm asking you.

A No, I don't think so.

THE COURT: I don't know how much time you want to spend on this. I understand what the purpose of the memo was, unless there is some dispute about what was its purpose.

What I'm puzzled about -- maybe, through, it may

have no importance at all -- you were worried that somebody would want to turn down business.

Why would they?

THE WITNESS: Well, it's an angle, your Honor. If you think the ceiling is too low -- you have got to remember that my partners don't give up easily, and if you think that $250 million is not enough ceiling for you to operate in, the best way to get what I have to describe as political support for raising it is to turn down some major issue on the basis that there is no, you know, there is no room here.

THE COURT: Now I understand why you used the phrase before, "take advantage of the opportunity." Okay.

THE WITNESS: That's what I think, but you know --

THE COURT: Right.

THE WITNESS: There were many discussions, your Honor, about the limit, you see.

THE COURT: Sure, sure.

Q Mr. Doty, I show you a copy of Defendant's BM which I believe is in evidence.

Mr. Doty, have you ever seen Defendant's BM before?

A Yes, sir.

Q The subject of the memo was finance inventory names.

Does this mean the memo relates to the inventory of finance companies or the financing of the companies which are listed in Defendant's Exhibit BM?

A I'm sorry, I must have been inattentive. Would you say that again?

Q The topic of the memo is "finance inventory names."

Does that mean, based on your reading of the memo and your understanding of the contents, that the memo relates to the financing of the companies which are listed in the memo, or the inventory of finance companies there?

A It's the latter. They're both the same. It relates to finance companies, how much inventory, and those are the ones listed.

Q These are all finance companies; is that correct?

A Yes, sir.

Q In connection with this memo, what action, if any, did you take?

A I didn't have any to take. This was just an indication on their part that they were trying to control their inventory, keep it in salable amounts.

THE COURT: This was merely for your information, right?

THE WITNESS: Yes, sir.

THE COURT: I didn't ask you to approve or disprove or take any action?

THE WITNESS: No. At the time, you know, we were pounding away at inventory and losing money and stuck in inventory.

Q Did you ever get a similar memo from Mr. Wilson in connection with Penn Central?

A No, sir, not to my recollection.

Q Were all memoranda to or from the management committee labeled "confidential"?

A Gee, I don't think so.

Q Any particular reason why this one would be and the others might not be?

A Well, I don't think you'd want to have your clients, necessarily, all of them, get their hands on a piece of paper like this that showed that you would be willing to only put a one million of Avco Credit but you'd have two million of American Credit.

I think there are just a lot of competitive reasons why such a piece of paper would not be a desirable thing to have around.

Q Are you implying that anything that isn't marked "confidential" is something that an issuer or one of your customers could know about?

A No. I just think it's a warning. I can't respond to that. I didn't put it on. I don't put "confidential" on most stuff, because you can't keep it confidential, so --

THE COURT: I guess the idea is it doesn't hurt to try, that's all.

THE WITNESS: Yes, sir.

THE COURT: It makes people a little more careful, at least.

Q The term "negative carry," in connection with inventory, isn't that a cost of doing commercial paper business as opposed to a "loss"?

A It turns out to be that, yes, sir.

Q Didn't the commercial paper department of Goldman Sachs in the years 1968 through 1970 in fact make a profit?

A The department made a profit? Yes, sir.

Q Mr. Doty, I refer you to Page 2 of Plaintiff's Exhibit 75, which is the blue book in front of you, and I refer you to the commercial paper department net profits, three-quarters of the way down the page.

A Yes, sir.

Q Can you explain why from 1968 through 1969 the net profits of the commercial paper department of Goldman Sachs increased; what were the factors involved in that increase?

A I'm not sure whether it's stated in here, but I assume that there is only one factor that really enables you to increase which would be increasing outstandings.

Q The outstandings of the issuers?

A Yes, sir. You know we --

THE COURT: Because there's just more business to do; is that one way of putting it?

THE WITNESS: Yes. The margin in commercial paper, in the time in question, went down from a 1/4 to 1/8. That's a per annum, that is not 1/8 on the face.

So you are in a very small margin of business, and you've got to do one hell of a lot of volume.

THE COURT: The only thing that could account for such an increase would be an increase in volume?

THE WITNESS: Our expenses didn't go down; that much I'm sure of. Interest rates may have worked a little in our favor.

Q And these profits increased notwithstanding the negative carry loss which existed in that period?

A The controlling feature would be the total amount

of outstandings. The profits increased. Whether they increased enough, as I mentioned earlier, that was a source of some controversy at our partners' meeting in '69 at Sterling Forest.

MR. ARONSON: Thank you, Mr. Doty. I have no further questions.

MR. MANEY: No redirect.

THE COURT: Thank you, Mr. Doty. Glad we're able to get you out of here on time.

(Witness excused)

MR. MANEY: Your Honor, we indicated earlier we would be starting Monday with Mr. Levy. Our only other remaining witness is Mr. Wilson, who will take a considerable amount of time.

If it's all right with the Court, perhaps we can adjourn now because --

THE COURT: I'm very pleased to adjourn now. Don't worry about that.

Off the record for a moment.

(Discussion off the record)

(Adjournment taken to November 3, 1975, at 10:00 a.m.)

jkrm 1

UNIVERSITY HILL FOUNDATION
vs.
GOLDMAN, SACHS & CO.,
Defendant

71 Civ. 1166

November 3, 1975
10:00 a.m.

ALSO PRESENT:
WILLIAM PIEL, JR., ESQ.

(Trial resumed.)

THE COURT: Good morning, Mr. Piel, how are you.

MR. PIEL: Good morning, your Honor. The defendant calls Mr. Gustave Levy.

G U S T A V E L E V Y , called as a witness by defendant, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PIEL:

Q Mr. Levy, you are the senior partner of Goldman, Sachs & Co.?

A Yes, sir, I am.

Q And have been for how long?

A For about seven years.

Q And who was your predecessor?

A Sidney J. Weinberg.

Q You succeeded him at the time of his death?

A Yes, sir.

Q When did you first join Goldman, Sachs & Co.?

A In February of 1933.

Q That is some 42 years ago?

A Yes.

Q With regard to your early training and experience, what educatio had you had before your first taking a job to earn a living?

A High school and three months of college.

Q Where did you go to college?

A Tulane University, New Orleans, Louisiana.

Q Was that your home town?

A Yes, sir.

Q You grew up in New Orleans?

A Yes, sir.

Q What were the circumstances of your leaving Tulane after three months?

A My family needed money and we had to come to New York, and I had to take a job.

Q What job did you get?

A I started as a runner in Wall Street in November of 1972.

Q What is a runner?

A Deliver securities, deliver mail and have comparison

stamps and that kind of thing.

Q What were your subsequent jobs?

A Well, I was with a firm called Newburg & Co., and after being a runner for about 11 months, I went upstairs in the arbitrage trading department. Then I worked for the New York Stock Exchange as a clerk, and then I went back upstairs as an arbitrageur, and Newburg & Co. decided to disband their arbitrage and bond department, and I got a job for a year with an over-the-counter house and then I went with Goldman, Sachs in February of 1933.

Q Did you resume your formal studies at any point?

A Yes, I went to night school, NYU night school for about six years.

Q Have you been with Goldman, Sachs ever since 1933?

A With the exception of about 37 or 8 months in the U.S. Army Air Forces.

Q How many months?

A 37 or 8 months.

Q In the Army Air Corps?

A U.S. Army Air Corps, yes.

Q You were overseas with the Air Corps?

A I was overseas for 26 months.

Q What was your rank when you went into the service?

A Lieutenant.

Q And when you came out?

A Lientenant Colonel.

Q Did you go back to work for Goldman, Sachs after the war?

A Right after, yes.

Q When did you become a partner?

A I got out of the army in November of '45 and became a partner in January 1st of 1946.

Q Are you also the director of a number of financial and industrial corporations?

A Yes, sir.

MR. PIEL: If your Honor please, to save time, with Mr. Breindel's consent, I would like to offer tabulations in lieu of oral testimony. These are Exhibit FD --

MR. BREINDEL: Your Honor, I don't object to the authenticity of these documents, but I object to the relevancy. I don't understand the relevancy of Mr. Levy's present directorship nor his directorships during the period in issue here, unless Penn Central is one of them.

THE COURT: I will receive the list and reserve decision as to its relevancy after I hear Mr. Piel's further questioning.

MR. PIEL: I will be glad to explain our theory of relevance.

jkrm 5 Levy-direct

Q Is this a correct list of your present directorships?

MR. PIEL: I offer it in evidence.

THE COURT: Received subject to -- as I say, I will reserve decision on it.

xx (Defendant's Exhibit FD received in evidence.)

A Yes, sir, it is a correct copy.

Q Now, I show you Exhibit FE, and ask you, in order to make this complete as to directorships that you had in 1968, '9 and '70, whether this is a list of other past directorships of yours?

THE COURT: Previous to '68 or previous to what?

MR. PIEL: No, directorships which he had in '68, which he does not have now.

THE COURT: I see. Why don't you amplify a little, Mr. Piel, as to what you think this does have to do with the case.

MR. PIEL: Well, it has two things to do with the case, your Honor. No. 1, we will show this to your Honor in summation brief rather than take the time of the Court to illustrate it in detail now, but among these corporations where Mr. Levy had directorship and directorship responsibilities, and I will ask him some other questions about the general relationship, are companies who purchased this Penn

Central commercial paper from Goldman, Sachs and we say to whom Goldman, Sachs sold paper during this time when Goldman, Sachs supposedly believed or had reason to believe Penn Central wasn't fit to offer in the marketplace. That is one point. The other point is, this is very pertinent to Mr. Levy's experience and qualifications, his expert qualifications as an investment banker, his overall judgment regarding not the commercial paper, because he wasn't a commercial paper man and wasn't in that department, but his overall judgment regarding the viability in the future of Penn Central as an ongoing operation.

Furthermore, he was acquainted by the Penn Central financial officers, Mr. Bevan and Mr. O'Herron, as the record shows, with what their needs were, what their financial position was, what their plans were for dealing with it, and although he didn't examine those plans in detail, since Penn Central was consulting other investment bankers, he was in a position to form some kind of an overall judgment relating to his responsibility as head of his firm, that this was a respectable company with viability, with durability, with survivability, and that the plans that were under consideration were feasible plans.

All of this experience goes to that point.

THE COURT: Really, without minimizing the scope

of what you have just described, you are talking about the question of motivation, to the extent that motivation is a factor in the case, is that right?

MR. PIEL: Yes.

THE COURT: Mr. Breindel, what do you have to say about that, anything?

MR. BREINDEL: I will repeat our position, your Honor. At no place have we contended that Goldman, Sachs continued to sell commercial paper when it shouldn't have because it had other business with Penn Central. It has been our position all along that the fact of the other business merely clouded its judgment.

THE COURT: I do not understand that to be Mr. Piel's contention. I understand, for example, the suggestion that Mr. Levy was on the board of various corporations and they bought Penn Central commercial paper, presumably that is evidence of the fact that Goldman, Sachs thought well of the Penn Central paper or they wouldn't have sold it or suggested it be bought by corporations on which Mr. Levy was a board member. And it is also evidence of his general background which I don't think is really necessary because I think his position as senior partner of the firm would be sufficient for that.

MR. BREINDEL: As to your first point, your Honor,

I don't think it is probative of the first point because Mr. Levy has given testimony under oath that he was not competent to judge the credit worthiness of Penn Central, and I assume he is not going to change that.

Secondly, with respect to the other corporations of which he was a director buying Penn Central commercial paper, the only way they could have known of these non-published things was if Mr. Levy revealed non-public information, and I am sure he did not. Given those two factors, I don't see any probity whatsoever to the fact that a corporation of which Mr. Levy was a board member bought commercial paper.

THE COURT: Well, it may have marginal weight but I will accept it.

MR. PIEL: May I just point out, your Honor, that beyond motivation, we also have here a question of the reasonableness of the actions of Goldman, Sachs in continuing to offer the paper, and on that score, this wealth and depth of business experience with lots of different financial and industrial enterprises gives some weight to an opinion that it was a viable and on-going company, because it is our contention, your Honor -- and again we will try to illustrate this in detail in summation briefing to the Court -- that the Board of Directors of Penn Central resolved, for reasons that

perhaps the Court will see as being political in nature as it were, matters of policy or polity, to put that organization into the reorganization court at a time when we contend, and our witnesses will endeavor to show to your Honor, they did not need to do that, that they went in as a business judgment that was based on considerations other than what the people in the credit department would call credit worthiness.

In other words, there were two questions: 1, is it credit worthy; 2, is it going to be an on-going company? It could be credit worthy and be at the risk of a decision to take drastic measures to resolve the still pending problems of the merger through the reorganization wringer, so to speak. But if anybody had suspected that that is what was going to happen, of course they should have stopped selling the paper, and what we are saying is that Mr. Levy had the experience and the background and the judgment to have what we ask your Honor to accept as a respectable opinion as of that time that this enterprise was not going to fold.

So his general business experience is relevant to that, even though he is not a commercial paper analyst or a commercial paper credit analyst, he does have a judgment about whether this enterprise is going to go on.

THE COURT: All right.

(Defendant's Exhibit FE received in evidence.)

xx

BY MR. PIEL:

Q Mr. Levy, will you please explain briefly to the Court how it comes about that as an investment banker, and the head of an investment banking firm you served on so many different Boards of Directors, what is the history of that?

A Your Honor, it has been the policy of our firm that normally, when an investment banker, particularly on an original issue of a first public offering of securities, we like to go on the board in order to protect our clients, and that's been the genesis of most of the directorates that our firm has.

Q When you say protect your clients, what are you referring to as your clients?

A The people who bought the equity securities from us; we usually go on, when we have an equity offering of common stock, to watch the affairs of the company, and so forth.

THE COURT: I understand. It must take a lot of time.

THE WITNESS: It does take a lot of time.

Q How much working time do you devote to these directorships?

A Anywheres between 25 and a third of my time.

Q How long is your working day?

A I get up at 5 o'clock in the morning and usually go to bed at 10, 11 o'clock at night.

Q Is that a working day?

A Well, it includes a lot of other things besides work, a lot of philanthropic activities, things of that kind.

Q How often do these boards meet?

A Most of them monthly, and some quarterly.

Q Have you had any conflict of meeting dates?

A Occasionally, and the companies usually work it out so that I can attend most meetings.

Q What is your attendance record with these companies?

A Pretty good. I don't know the exact percentage, but it is quite good.

Q Now, has any member or representative of Goldman, Sachs served on the board of Penn Central Transporation Company?

A No, sir.

Q Or Penn Central Company?

A No, sir.

Q Or any of these related companies?

A No, sir.

Q Have you been engaged in any teaching activity?

A Yes, sir.

Q What do you do?

A I give a course for the last four, five years on Current Events in Investment Banking to a class up at New York University.

Q In which school?

A School of Business and Finance.

Q Are you a member of the New York Stock Exchange?

A Yes, sir.

Q You have a personal membership as well as a firm membership?

A Yes, sir.

Q You are one of the partners who belongs to the Exchange?

A Right.

Q And have you held any office in the Exchange?

A Yes, sir. I was Chairman for two years, and I have been a Director, a Governor and a Director for about ten years.

Q And you still are?

A Yes, sir, I still am.

Q How often is the election of Directors?

A You serve for a two-year period.

Q And you have been regularly reelected since --

A Pardon me, we serve for a three-year period and I have been regularly reelected.

Q When were you President?

A When was I Chairman?

Q Chairman; excuse me.

A I think it was 1967 and '8.

Q 1967 and '8?

A Yes.

Q And since then you have been --

A I have been a Director except for a hiatus --

Q You have been reelected repeatedly as a Director?

A Not repeatedly. There was a hiatus for about two years when I could not serve because I had served too many years in a row and I had to take time off.

Q Under the by-laws.

A Under the by-laws of the Exchange, yes.

Q You are Commissioner of the Port of New York Authority?

A I am Commissioner of the Port of New York Authority.

Q And you have been a member of the Economics Development Council of the City of New York?

A Yes, sir.

Q As to your philanthropies, I don't want you to take the time of the Court to talk about philanthropies where you are on the letterhead or sit on the dais or give them a

lot of money, but among your philanthropies are there any which engage your time and responsibility for business purposes --

A Yes, sir.

Q -- of those organizations?

A Yes, sir.

Q What are those?

A Well, I am President and Chairman of the three Mt. Sinai Institutions, Mt. Sinai Medical Center, the medical school, and the hospital, and I am on the Executive Committee of Lincoln Center and Treasurer, and I am on the -- I am a trustee of the Museum of Modern Art and Chairman of the Development Committee.

Q Go back to the period that we are dealing with here, in the period 1968, 1970, did Goldman, Sachs have an office manual to instruct members of the office or new employees in the policies and practices of the firm?

A It did not.

Q Had it ever had one?

A No, sir, not at that time.

Q Was there any department of Goldman, Sachs that had a manual of instruction or policy and practice?

A No, sir.

Q Had there ever been one?

A No, sir, not to my knowledge.

Q were your employees, new employees, trained and informed of policies and procedures?

A Yes, sir.

Q How was that done?

A It was done on a person-to-person basis and on-the-job training.

Q How was Robert Wilson selected to head the commercial papers department?

A By his predecessor, John Rhoades.

Q Can you tell us something about Mr. Rhoades?

A Mr. Rhoades has been with Goldman, Sachs for many, many years, and he retired I believe primarily because of ill health, and he recommended that Bob Wilson take his place. He in turn had succeeded a fellow named Robert Anderson who had also retired for ill health, and recommended John Rhoades to succeed him.

Q Had Wilsor had training under those men?

A Yes, sir, he had been solely in the commercial paper department since as long as he was with Goldman, Sachs, to the best of my recollection.

Q Referring now to the period that we are concerned with here, up to March 13, 1970, did the management committee of Goldman, Sachs give directions to the commercial paper

department on matters of credit investigation and marketing of commercial paper?

A No, sir.

Q Was there anyone on the management committee who had background or experience in credit investigation or marketing of commercial paper?

A I don't believe there was.

Q Did you?

A No, sir.

Q Specifically. Were you the head of the management committee?

A Yes, sir.

THE COURT: What would you consider to be the relevance of the fact that the management committee were not experienced, in the broad way, of credit matters, Mr. Piel? If there is a responsibility, there is a responsibility in the organization, isn't there?

MR. PIEL: That's right, certainly. My purpose in going into this is suggestions that appear in a briefing of the opposition that for some reason or other the management committee wasn't paying attention to its business and the like, and I am trying to show that structurally and historically the leading commercial paper firm in the country had run successfully under a system in which the

commercial paper department was delegated complete authority to run itself and make its own decisions.

THE COURT: All right.

Q Who made the decision to handle the commercial paper of a particular issuer who wanted to use Goldman, Sachs' facilities for that purpose?

A Bob Wilson and the heads of the commercial paper department.

Q Did they --

THE COURT: I am not quite clear. Does that mean they made the decision with regard to whether Goldman, Sachs would act as the seller for --

MR. PIEL: The dealer, yes.

THE COURT: For the commercial paper?

THE WITNESS: Yes, for instance, I'd bring in some of the business, and my other partners would bring in the business, but it was Wilson, the commercial paper department's sole responsibility whether or not we engaged in selling the notes of the issuer.

THE COURT: Is that still true?

THE WITNESS: Yes, sir.

Q Briefly, will you give the Court your recollection at this time of how it came about that Goldman, Sachs started handling the commercial paper of Penn Central? Was there

some background to that?

A Yes, sir. Mr. Sidney Weinberg, now deceased, was a good friend of Mr. Saunders, who was then the Chief Executive of the Pennsylvania Railroad, and then subsequently the combined Penn Central, and so was my partner, Joe Fowler, a great friend of Mr. Saunders, and I knew Mr. Bevan, and quite well for many years, and my partner, Mr. Walter Blaine, who is now a limited part, who knew Mr. Bevan quite well, as well, and I am not sure which came first, whether we invited Bevan in or he suggested he come in, but, in any event, he came in for lunch and we discussed the issuance of commercial paper with him, and it developed from that luncheon.

THE COURT: When was this, Mr. Levy?

THE WITNESS: I think it was sometime around '66, I think, your Honor; if I remember correctly. Maybe it was earlier. '65 or '66, I believe.

THE COURT: That would have been with the Pennsylvania Railroad. The company was not merged in '66?

THE WITNESS: It was about to be merged, and we had the initial discussion. I have forgotten the exact date. Maybe it was later than that, but it was --

THE COURT: You are talking about the merged company?

THE WITNESS: We are talking about the merged

company, although we had done some things for the Central before, we had never done anything for the Pennsylvania.

THE COURT: Let's not get hung up on this. You can correct it later if it is incorrect.

MR. PIEL: We have the blue sheet which indicates -- Exhibit A-18, the blue sheet of March 18, 1968.

THE WITNESS: I will correct it, it was '68 then.

Q Just take a look at that and tell us if that is the luncheon that you are referring to?

A Yes, sir, that's the one I'm referring to, your Honor.

Q Please tell the Court, and I want you to tell the Court more about Mr. Bevan, what you knew about him at that time, what your experience with him had been?

A Prior to going with the Pennsylvania Railroad, David Bevan, your Honor, was Chief Financial Officer for the New York Life Insurance Company here in New York City, which is one of the big 3, the other two being the Metropolitan and the Mutual of New York. And in that capacity, he had responsibility for all of their investments, short-term and long-term, debt and equity, and we'd got to know him, we'd sold him securities, New York Life, for many, many years, and we'd gotten to know him reasonably well there.

Q What was, just in order of magnitude, the size of

the investment portfolio that he supervised at New York Life?

A I'm not exactly sure of the total, but several billion dollars of assets.

Q Did that include investing in entire corporate issues, debentures, so-called private placement transactions?

A They'd buy issues of 10 to 25 or even 50 million dollars of private placement debentures and they'd participate with others in larger amounts.

Q Was it necessary for Mr. Bevan, as the Chief Executive Officer of New York Life making investments of that kind, to judge the financial condition and financial planning of corporations that offered their securities?

A It was. It was, your Honor.

Q Were you acquainted with Mr. Bevan's reputation in the financial community for integrity and ability?

A Yes, sir.

Q What was it?

A To the best of my belief, it was impeccable.

Q And did he in due course become the Chief Financial Officer of the Penn Central?

A He did.

Q Now, did you know other people connected with the Pennsylvania Railroad who were afterwards with Penn Central?

A Yes, sir. I knew a couple of them. I knew Bevan's assistant who had come -- one of his assistants who had come from the Central.

Q You are saying the Central or the Pennsylvania? I am focusing on the Pennsylvania.

A I knew a couple of them. Not well, but I knew them. I had met them. As a matter of fact, I think one or two of them attended that luncheon I mentioned in March.

Q Do you know Mr. Gerstnecker?

A Yes, sir.

Q He had been the Treasurer?

A Yes, he had.

Q And became the Treasurer of the Penn Central?

A Of the combined companies, yes.

Q Mr. Saunders you mentioned before.

A I just met him. I didn't know him.

Q Did you know his reputation in the financial

community for integrity and ability?

A Yes.

Q What was it?

A He had top-flight character and reputedly was a top-flight man in all respects.

Q On the New York Central side of the merger, had you known any of the officers of New York Central?

A Yes, sir.

Q Who did you know?

A I knew Alfred Perlman, who was the Chief Executive Officer of the Central. He subsequently became Chief Operating Officer of the combined road. And I knew Grant, who was the financial man, Walter Grant. He was the financial man.

Q Did you know Mr. Alfred Perlman's reputation in the financial community?

A He was well known as a top-flight railroad man and a man of great integrity.

Q Did there come a time in late 1969 when Mr. Perlman resigned as President?

A Yes, he did.

Q And was he succeeded by Mr. Paul Gorman?

A Yes, sir.

Q Had you known Mr. Paul Gorman before?

A I had.

Q In what connection?

A Well, he was President of Western Electric, which was a client of our and I also knew him from sitting together with him on the Board of the New York Telephone Company, in which we both were Directors at that time.

THE COURT: What company did you say he was employed by, Western Electric?

THE WITNESS: He was the Chief Executive Officer of Western Electric Company.

Q Western Electric is a wholly-owned manufacturing subsidiary of AT&T; is that correct?

A Yes, sir.

Q And New York Telephone Company is another subsidiary of AT&T?

A Yes, sir.

Q So Mr. Gorman ran Western Electric and sat with you on the Board of the New York Telephone Company?

A Yes.

Q What was, if you know, Mr. Gorman's reputation in the financial community?

A He also had a top-flight reputation in all respects.

Q Mr. Levy, did Mr. Gorman stay with the Penn Central

after the reorganization? Did Mr. Paul Gorman stay with the Penn Central?

A No, he did not. I think he became Chief Executive Officer of International Paper Company.

Q Now if you will please look at the blue sheet for February 5, 1970, PX11. Have you glanced at that?

A Yes, sir.

Q There is in the first paragraph -- this is by Mr. Wilson, and he is saying -- "Having talked with GLL last night ..."

That is you, right?

A Yes.

Q "... and JCH this morning, I called John O'Herron" and so forth "regarding the operating loss for the year 1969 reported in the press."

A Yes.

Q Who was JCH?

A JCH was and is James C. Hemphill, who also was a general partner and is now a limited partner of Goldman, Sachs & Co. He was the head of our Chicago office and throughout his long career with Goldman, Sachs he mainly concerned himself with commercial paper.

Q Did you have a commercial paper operation in Chicago?

A Yes, we did and do.

Q And that was run by Mr. Hemphill at that time?

A Yes.

Q Where were you, can you recall from this, from the circumstances of this, where you were when Mr. Wilson talked to you?

A I was in St. Louis attending a May Department Store Board meeting.

Q What was your practice with regard to going to that meeting?

A I would normally go out late in the afternoon, attend a dinner there that the company gave for Directors the night before, attend the meeting which usually started 9 o'clock in the morning and get the earliest plane I could back to New York.

Q On this occasion, did you follow your usual practice?

A I did.

Q There wasn't anything about this that caused you to change your plans?

A No, sir.

Q Would you look at the blue sheet of February 6, 1970, which is Exhibit PX12.

Do you recall the luncheon that is referred to

there with Mr. Bevan and O'Herron?

A Yes, sir.

THE COURT: You got back from St. Louis when?

THE WITNESS: The afternoon of the 5th and had lunch the next day, the 6th, at the Recess Club which happens to be right across from our office at 56 Broad Street.

Q Is that where you had the lunch?

A Yes.

Q You have at my request examined this blue sheet before, Mr. Levy. I ask you whether after having examined it you have any recollection of any matters of substance that occurred at the luncheon beyond what is shown in this blue sheet?

A No, sir.

Q Let me ask you to explain a couple of things that appear there.

First of all, I would like you to examine with care the second paragraph of the blue sheet which summarizes what Mr. Bevan and Mr. O'Herron said about the railroad's needs and their plans for meeting those needs.

A Yes, sir.

Q In your prior career in investment banking, had you had occasion to form your own judgment of the feasibility of financing plans of corporations?

A Yes, sir.

Q Did you have a view as to the feasibility of the plan that Mr. Bevan and Mr. O'Herron outlined to you that day?

A Yes.

Q What was that view?

A I hadn't had time to deal in depth with it, but it looked feasible. It sounded feasible to me. And particularly I presumed that they had discussed this with their investment bankers, which we were not, Kuhn Loeb, First Boston, Salomon Bros. and Glore, Forgan

Q That is four houses you are referring to?

A Yes, sir. I believe all of them dealt with him at one time and another and were consulted on these financing plans.

Q What was the standing and reputation of those firms in t banking community?

A At that time they were all very top-grade people, high-grade firms, so-called major investment bankers.

Q As a matter of fact, was a financing thereafter, a public financing, thereafter arranged?

A I believe there was, sir.

Q Was anything said at that luncheon by those men that led you to believe that Penn Central Transporation Company could not or would not pay its debts as they came due?

A Absolutely not. If I felt that way, I would have suggested to Wilson we stop selling the notes.

Q Did you learn anything from any other source up to March 13, 1970, that led you to suspect some such danger?

A No, sir.

Q Now going back to Exhibit PX12, the February 6 memorandum of Wilson, the last paragraph on the first page, going down into that paragraph, "Both Dave Bevan and John O'Herron responded to our ideas by saying they did not feel they could get one hundred million in back lines at this time."

THE COURT: Referring to Exhibit 12 or 11?

MR. PIEL: That's 12, your Honor. It is the sentence beginning with the last line on the first page.

THE COURT: Right.

Q Do you have that, Mr. Levy?

A The last line of the first page?

Q It starts there. "Both Dave Bevan and" --

A I have got it.

Q What did you understand was the reason for that statement?

MR. BREINDEL: Objection, your Honor. Mr. Levy's understanding and his mental process at that time I don't believe is an issue.

THE COURT: Mr. Piel is trying to put it in issue. I rule it is conceivable it may be.

A Your Honor, at that particular time money was very tight, interest rates were very, very high and banks were reluctant to grant lines which went out to the future, that might be called upon in the future, they would rather take care of immediate credit needs rather than grant lines in the future because of the tightness of money at that time. If you recall, money was 12, 13 percent, the prime rate was way up and the money market was very, very tight.

Q Did you regard that statement by them as any reflection on the credit of the railroad?

A No, sir, because it was difficult to get lines -- all people were having difficulty getting lines at that time.

Q And, in fact, did they get a bank loan thereafter?

A I believe they did.

Q During the period from August 1, 1968, when Goldman, Sachs began offering the Penn Central paper, until March 13, 1970, when this plaintiff invested and bought a note, what was your view as to the future of the Penn Central? Please explain to the Court what you understood and believed at that time was the future of the road.

MR. BREINDEL: I object, your Honor, on the ground that the defendants have already established it was Mr. Wilson

who made the decision whether or not to keep selling Penn Central paper and not Mr. Levy, who has testified he has no competency to evaluate the credit worthiness of Penn Central.

THE COURT: In the light of the assertion -- I want to ask Mr. Piel -- that Mr. Wilson was the man who made the decision here, what do you suggest Mr. Levy's role is?

MR. PIEL: It is suggested by plaintiff in their brief certainly, whether it has come to your Honor's attention or not, everybody was negligent about this and they were motivated by a desire to curry the favor and other business of the Penn Central and that their judgment was clouded, and that extends to a cloud over Mr. Levy's judgment. I think it certainly goes to the motivation of the firm.

Also, I come back to the point, your Honor, which I think is of some importance here, that there is a distinction between the judgment that the Penn Central Transporation Company is credit worthy in the commercial paper credit analysts' sense of having the means to meet its obligations and the question of whether it is viable and endurable in the sense of the Board of Directors and operators having the intention to continue in business, and what happened here, in our submission, was a failure of intention, not of credit worthiness, and therefore I am

trying to show here, as this develops before the Court, that that wasn't anticipated.

THE COURT: I get your theory.

MR. BREINDEL: I beg to point out I do not believe he is competent to testify as to the intentions of his friends, Mr. Saunders and Mr. Bevans.

THE COURT: He has not so testified yet. The theory at least describes relevant material. I will allow the question.

Q Do you have the question in mind?

A Would you repeat it, if you don't mind.

THE COURT: The question was, what your attitude was towards the Penn Central situation.

Q What was your belief as to the Penn Central and its future?

THE COURT: Or beliefs. They may vary.

A Your Honor, I felt the Penn Central was a viable situation. The merger agreement and all the testimony before the ICC, which a lot of it was public information and made headlines in the papers and whatnot, was that the reorganization or the merger, the savings that would come, operating savings that would come between the two roads would take three or four years to be accomplished and that everybody expected in the first year or two of operations that

the railroad, the operating companies, the railroad part would lose money in both companies, and nonetheless, knowing all this, we sold the notes in what we felt and I felt was a viable situation.

Q At any time up to March 13, 1970, had anything come --

THE COURT: When there was an announcement of the $56 million loss, did it strike you as larger than you would expect it?

THE WITNESS: No, sir. I believe that that is what they had estimated they were going to lose. I am not sure of that. No, sir, it didn't, because even with a $56 million loss I think the consolidated was more or less a break-even or profit. I have forgotten what the details were.

THE COURT: Did you count on the consolidated as being one situation which the note holders could look to?

THE WITNESS: I counted -- my judgment again. I am not a commercial paper man, but my judgment as an investment man or investment banker was that all these other assets that they had besides the railroad assets were sufficient to carry the combined -- the merged companies on until the railroad probably became profitable.

Q At any time up to March 13, 1970, had anything

come to your attention which suggested to you that the Penn Central Transportation Company Board of Directors might put their company into the reorganization court while commercial paper notes were outstanding?

A Absolutely not. Absolutely none, I should say.

Q Did there come a time in early 1969 when you became trustee of the trust established by Walter Annenberg and his personal company, Triangle Publications, which trust contained shares of Penn Central common stock?

MR. BREINDEL: Objection, your Honor. I don't see the relevance of the Annenberg trust to this lawsuit.

THE COURT: It seems to me the relevance would be the same as the relevance of the directorships.

MR. PIEL: It goes beyond that, your Honor, because the trust contained -- shall I make an offer of proof on this point?

THE COURT: Yes.

MR. PIEL: The trust contained a very large block of about 180,000 shares of Penn Central. Mr. Annenberg had been a Director. He was appointed Ambassador to the Court of St. James and he wanted to make a blind trust for all of his holdings. He asked Mr. Levy, an old friend of his of long standing, to serve as the trustee of that trust. The trust contained shares of Campbell Soup Company, Mr.

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Annenberg had been a Director once, the Girard Trust Company, General Motors and this enormous amount of Penn Central stock. The time came after that trust was set up Mr. Levy's study of the market led him to believe there was going to be a pronounced decline in the equity markets, stock markets --

THE COURT: In general?

MR. PIEL: In general. -- and that it would be a favor to his friend if he would exercise his discretion, which he held solely and without any directions from Mr. Annenberg whatsoever, to sell out that portfolio and invest it in the high yields then available on debt securities to await a time when the market going through its cycle would hit bottom, when he would convert back at low prices to the equities with a further enhancement of this trust. Pursuant to that he sold out all of the General Motors, all of the Campbell Soup, all of the Girard Trust Company and he started to liquidate this enormous amount of Penn Central common stock, started to feed it into the market without knocking the market down. He sold 15,400 shares at 52 and 53 dollars a share in May of '69; in November of '69 he sold another 5,500 at $32 and $33 a share as the market was generally declining, and at that point he decided to stop selling. He had only sold 21,000 shares out of the 180. He still had 159,500 shares on hand and decided not to sell

because in his judgment at that point the Penn Central stock was worth so much more than you could get for it in the market. So he stopped selling and he held 159,500 shares as trustee for Mr. Annenberg on June 21, when the road went into reorganization, and thereafter in June sold the remaining shares at $7 and $8 a share. This is a badge of good faith and good intentions and honest though sadly mistaken judgment.

MR. BREINDEL: I might point out that this line of evidence was excluded by Judge Metzner.

THE COURT: I think it is peripheral. I am not quite clear what the complaint was in the other case. You may wish to refine and focus the extent to which you do allege that the judgment of the defendants in this case was influenced by anything other than a lack of knowledge. To the extent, of course, that they may have been obligated to look further into the affairs of Penn Central than they did, the question of good faith and so forth is irrelevant. To the extent you claim their judgment was clouded, I think Mr. Piel is entitled to show what the judgment depended on and to the extent that good faith is an issue, I think he is entitled to show what their genuine belief was.

MR. BREINDEL: If I might point out we are dealing, No. 1, with the good faith of Mr. Wilson, whom the

defendant has established made the decision whether or not to deal in Penn Central commercial paper, not Mr. Levy. In addition, in order for Mr. Levy to be affected by what the commercial paper department learned about Penn Central and to pass this on and use it in connection with the Annenberg trust, he would have to violate confidential information, and he didn't.

THE COURT: I do not think the situation is he did that at all. Mr. Piel is merely trying to establish, and again I say it may be quite peripheral, if relevant, that to the extent Mr. Levy's judgment or the judgment of anybody at Goldman, Sachs is called into question, he wants to establish a basis for their judgment. I think it is pretty remote, Mr. Piel, but I am willing to hear it.

MR. PIEL: It should be persuasive on the issue of bad faith of this organization.

THE COURT: To the extent there are questions of bad faith I have said I agree, but I don't know that the case is going to turn on that at all. In any event, Mr. Piel, I think we can save a lot of time, and Mr. Breindel might be agreeable to this, to ask Mr. Levy if he heard your recital of the facts and whether it is substantially correct, subject, of course, to cross examination by Mr. Breindel on those facts if he wants to cross examine at the appropriate

time.

MR. BREINDEL: I will concent to that.

THE COURT: Did you hear Mr. Piel's recital?

THE WITNESS: Yes.

THE COURT: Is it correct?

THE WITNESS: Absolutely correct.

MR. PIEL: I also submit FF and FG in evidence.

THE COURT: What are they?

MR. PIEL: The trust instruments -- I withdraw the offer.

Q Did there come a time in February 1970, prior to the purchase by this plaintiff, when you had correspondence with Mr. Annenberg about Penn Central?

A Yes, sir.

Q I show you Exhibit CB and ask if that is a letter that you received from Mr. Annenberg?

A Yes, sir.

Q On February 20, 1970?

A Yes, sir.

Q There is a reference in this letter to a Butcher.

A Yes, sir.

Q What does that refer to?

A Butcher Sherrerd is a member of the New York Stock Exchange firm.

Q How do you spell that?

A S-h-e-r-r-e or a-r-d, I believe. Don't hold me to that. I think that's the way it is spelled, the New York Stock Exchange member firm, whose principal office of business is Philadelphia. Howard Butcher had been a Director of the Penn Central, and his firm put out a memorandum regarding Penn Central which Mr. Annenberg sent to me and asked me to comment on it.

Q What did you do when you got that memorandum; what did you do about that, if anything?

A I sent it to our railroad analyst and asked him to comment upon it.

THE COURT: At Goldman, Sachs?

THE WITNESS: At Goldman, Sachs & Co., yes, sir.

Q And did your railroad analyst comment on it?

A He did, sir.

Q I show you Exhibit C and ask you if that is the comment on February 25, 1970?

A Yes, sir.

Q In the last paragraph was your railroad analyst's conclusion regarding the status of an investment in the equity of Penn Central, is that right?

A Yes, sir. He said, "On this basis we believe the stock is attractive. However, obtaining the above goals will take time, and as Butcher Sherrerd points out, the big earnings play is sometimes off."

Q What did you do with that memorandum?

A I sent it along to Ambassador Annenberg with a covering letter.

Q I show you Exhibit CD and ask you if that is the covering letter?

A Yes, it is.

MR. PIEL: I offer in evidence CB, CD and CE.

THE COURT: As evidence of the fact that Mr. Levy

and his adviser thought that things were in pretty good shape in February 1970?

MR. PIEL: Following their luncheon on February 6, your Honor, prior to this purchase, yes, your Honor.

THE COURT: All right. For the limited purposes that we have discussed, I will accept it.

(Defendant's Exhibits CB, CD and CE received in evidence.)

Q Now I show you --

MR. PIEL: Again, if your Honor please, on the issue of motive, because it is subsequent to the date of the purchase.

Q I show you Exhibit CG and ask you to tell the Court what that is.

THE COURT: Confirmation or something?

A Yes, sir, your Honor, it is a confirmation that Goldman, Sachs as principal had bought 70,000 shares of Penn Central stock at $13.25 per share.

Q On May 27?

A On May 27.

Q 1970?

A 1970.

THE COURT: How many shares?

THE WITNESS: 70,000 7-0.

Q That was a purchase made as a block trading possession?

A Yes, sir. I believe the total amount involved was 96,000 shares, which we had a buyer for 26,000 shares, and we bought 70,000 as principal at 13-1/4 per share.

Q Will you explain to the Court what block trading is, how that functions in your business?

A Well, we have been a principal, your Honor, we have been a principal house in block trading for many years now, and this was just a routine purchase of 70,000 shares of Penn Central, at 13-1/4, to accommodate a customer who wanted to sell it at that time, and over a period of days, hopefully, we'd peddle it out at a profit, and sometimes we made a loss.

THE COURT: Were you personally acquainted with the transaction at the time it occurred?

THE WITNESS. I believe I was, your Honor.

Q Mr. Levy, the reason for your taking this into possession, at your risk, rather than the seller putting it out into the market, is that if you put it out into the market he couldn't get the price?

A Correct.

Q It would break the market?

A It would disturb the market unduly.

Q So that you invested Goldman, Sachs' capital to this extent in taking the risk of that possession until you could in an orderly way liquidate it over a period of time hopefully at a profit?

A That is correct.

MR. PIEL: Thank you, your Honor. That is all.

THE COURT: Thank you, Mr. Piel.

MR. PIEL: May I offer in evidence Exhibit CG.

THE COURT: Yes.

MR. BREINDEL: I have no objection, your Honor, if I understand it is limited to its post-purchase information which goes to good faith.

THE COURT: That's right.

MR. PIEL: Yes.

(Defendant's Exhibit CG received in evidence.)

THE COURT: Mr. Breindel, we have the top of the batting order again?

MR. BREINDEL: Regrettably.

THE COURT: How many times have you been to bat in these trials, Mr. Levy?

THE WITNESS: I think this is No. 4 or 5. I think it is No. 4.

MR. PIEL: No. 4.

THE WITNESS: No. 4.

THE COURT: Been in every game, anyhow.

THE WITNESS: Yes, I never get quite used to it, your Honor.

CROSS EXAMINATION

BY MR. BREINDEL:

Q Mr. Levy, did you look at any documents to refresh your recollection prior to testifying here today?

A I did.

Q And could you tell us what documents you looked at?

A I believe the February 5 and 6 documents and I'm not sure if there were any others or not. I know that February 5 and 6 the blue sheets of ours; I'm not sure if there was anything else or not.

Q Can you recall if you looked at that August 1968 blue sheet you testified about?

A That I did not look at.

Q In connection with Goldman, Sachs' sale of Penn Central commercial paper, you have testified before the SEC, is that correct?

A I did.

Q And did you see a transcript of your testimony before the SEC?

A I did.

THE COURT: Recently or when, ever?

Q At any time after --

A I did afterwards, yes, sir.

Q And you reviewed it?

A Yes, sir. That was quite a bit of time ago.

Q And you testified at the Welch trial; is that correct?

A Yes.

Q And did you ever see a transcript of your testimony at the Welch trial, Mr. Levy?

A I did.

Q And did you review that?

A I did.

Q And you testified at the Franklin trial, is that correct?

A Yes.

Q And did you review your transcript of your testimony at the Franklin trial?

A I don't believe I did.

Q I believe in answer to a question from Judge Lasker you stated that the $56 million operating loss of the railroad in 1969 did not strike you as unexpected; is that correct?

A Yes, I did.

Q Did it disturb you?

A Any loss disturbs me, but as I said before, Mr. Breindel, there was a lot of publicity in the ICC, Interstate Commerce Commission releases about approving the merger, that the railroads would operate at a loss in the early years of the merger.

Q My question simply was, did it disturb you?

A I don't recall that it did. As I say any loss, I don't like to see any losses, but it didn't disturb me unduly because I knew about it. I had expected it; let me put it that way.

Q You expected it so it didn't surprise you?

A No, sir.

Q Did it surprise Mr. Weinberg?

A Mr. Weinberg I think was dead. It couldn't surprise him.

THE COURT: Which Weinberg?

MR. BREINDEL: John Weinberg. I'm sorry.

A I can't answer for John Weinberg.

Q Can you answer for Mr. Wilson?

A I can't answer for Mr. Wilson.

Q Do you recall testifying at your deposition on or about May 31, 1972, your deposition, when Mr. Pollack examined you?

A I recall it but I don't remember everything that

went on there, believe me.

MR. BREINDEL: Page 147.

Q I am going to ask you if the following questions were asked and the following answers given at that deposition.

A Okay.

Q "Q I believe that those are the first quarter earnings. I am now asking you as to whether Wilson was disturbed about the $56 million loss which was for the year 1969?

"A I don't know. You will have to ask him that question.

"Q Did he not express that very point to you in a telephone call from New York to St. Louis?

"A I think he probably did.

"Q On February 4, 1970?

"A I'll have to refresh my memory. Yes, he talked to me on the night of February 4, after he had heard of the $56 million loss for the year 1969.

"Q In your SEC testimony, Mr. Levy, were you asked these questions and did you give these answers at page 54.

"'Q Do you recall anything about a conversation with Mr. Wilson on February 4?

"'A The night of February 4?

"'Q Yes.

"'A Well, he called me after he read in the paper about the operating loss for the year 1969 and said he was disturbed. He wanted to find out more about it.'

"A That is a true statement.

"Q Did you discuss the $56 million loss with John Weinberg?

"A I don't recall that I did.

"Q In your SEC testimony at page 55 were you asked these questions and did you give these answers:

"'Q What did he say about the losses?

"'A He called me up and he said he heard about the losses, and was disturbed about them and wanted to get more facts.'"

MR. PIEL: You concede, of course, Mr. Breindel, that that is going back to the telephone conversation with Mr. Wilson, don't you? That is the context of it. This is a very strange double impeachment that is going on here that isn't contradicting anybody.

THE COURT: Mr. Piel, don't be narrow on your side. I will not let Mr. Breindel be narrow on his. I do understand that what Mr. Breindel is trying to bring out is that there has been an occasion on which Mr. Levy has testified that Mr. Wilson did say to him that he was concerned. I don't know whether we have to go on forever about

that, but I understand that.

THE WITNESS: We had the meeting the next day, your Honor, as a matter of fact.

THE COURT: Well, do you recall, after hearing that, that Mr. Wilson, when he spoke to you that night in St. Louis was disturbed?

THE WITNESS: Yes, sir.

THE COURT: I think that proves your point, Mr. Breindel, doesn't it?

MR. BREINDEL: Okay.

Q Well, on the same point, do you recall now whether or not you were surprised by news of the $56 million loss?

A I really don't recall whether I was surprised or not, Mr. Breindel.

Q Let me just read you two more, another question and answer from page 148 of your deposition, which is quoting, I believe from the SEC, your prior SEC testimony:

"'Q Were you surprised by the information he gave you?

"'A I was. I had no idea the loss was so substantial.'"

Does that refresh your recollection?

A Yes.

Q So that on February 4, 1970, when Mr. Wilson called you, and he told you about Penn Central's $56 million

loss on its railroad operations, you were surprised, and you were surprised at the amount of the loss; is that correct?

A Yes. You refreshed my recollection by reading the testimony I gave earlier.

Q Now, do you know why Mr. Wilson called you on February 4 in view of the fact that I believe you were to be back in your office on February 5?

A I presume he wanted me to set up this lunch with Mr. Bevan.

Q Do you know why there was any reason he couldn't wait for you to get back to New York on February 5?

A That I couldn't tell.

Q Mr. Levy, I believe you testified as to your understanding as to why Penn Central couldn't get bank lines; is that correct?

A Yes, I did.

Q Just briefly, again, would you tell us what was your understanding as to why Penn Central couldn't get bank lines?

A Yes, sir. As I recall, on Mr. Piel's question, your Honor, I said that the reason they couldn't get bank lines was money was very tight at the time and very expensive, and a lot of companies were having difficulty getting lines, and the banks were more prone to give a loan,

issue the money right out rather than give a credit line, which would be executed sometime, may be executed sometime in the future.

Q Mr. Levy, the great majority, and I'm talking in the period 1968 through '70, the great majority of Goldman, Sach's commercial paper customers or investors were professionals, were they not?

A The investors?

Q Yes, the people who bought commercial paper from Goldman Sachs?

A I guess they were, although again, Mr. Breindel, I was never in the commercial paper department, I never bought a piece of commercial paper acting for Goldman, Sachs or sold a piece acting for Goldman, Sachs. I think the bulk of their investors were professionals. I image they had a few non-professionals.

Q Would it be your estimate that approximately 90 percent of the investors were professional investors?

A I wouldn't take a guess, but perhaps that's in the ballpark. I just don't know.

Q You will not take a guess now but you previously did, didn't you?

A I don't know.

Q Well, I will refresh your recollection.

A Okay.

Q Turning to page 222, Mr. Levy, of your deposition testimony conducted by Mr. Pollack.

A Again, that was a long while ago. I can't remember everything he asked me.

Q I'm trying to refresh your recollection.

A Okay.

Q "Q Mr. Levy, yesterday you testified, in substance, that the people to whom Goldman, Sachs & Co. sold commercial paper were all professional investors, is that correct?

"A I said primarily professional investors. As I remember, 90 percent or something like that. I didn't say all."

Does that refresh your recollection?

A Yes, sir.

Q Does that testimony remain true today?

MR. PIEL: Objection on the ground it is not creating a contradiction.

THE COURT: I don't think it is inconsistent particularly. Mr. Levy did not remember it was 90 percent before. He said the big majority.

Q Now, Mr. Levy, while Goldman, Sachs was selling Penn Central's commercial paper, Penn Central had some

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problems, didn't they?

A What do you mean by problems?

Q Problems like slow moving inventory, insufficient bank line coverage?

A What do you mean, slow moving inventory?

THE COURT: Are you talking about Goldman, Sachs having problems?

MR. BREINDEL: No, Goldman, Sachs having problems in connection with Penn Central.

THE COURT: That's what I mean, when you are speaking about inventory, you are speaking about inventory of commercial paper --

THE WITNESS: That is not what you asked me. You asked me was Penn Central having problems.

MR. BREINDEL: Yes; let me rephrase it.

THE COURT: Rephrase it. It is not clear.

Q During the period of time Goldman, Sachs was selling Penn Central commercial paper, was Penn Central having any problems in connection with that commercial paper?

A Was Penn Central having problems? I don't --

THE COURT: Ask a specific question. You are on cross examination.

Q Mr. Levy, what was your responsibility during this period of time in connection with the commercial paper

department of Goldman, Sachs?

A Well, I had no direct responsibility in connection with the commercial paper department. I had the responsiblity of overall senior partner of the firm and chairman of the management committee.

Q In the ordinary course of events, you would not be consulted as to a problem Goldman, Sachs might be having with Penn Central commercial paper unless it was a significant problem; is that correct?

A I don't know. He might consult me on insignificant problems, but he would consult me on problems, I believe.

THE COURT: Mr. Wilson or who?

THE WITNESS: Mr. Wilson.

Q Do you recall Mr. Wilson consulting you with any problems with respect to Penn Central commercial paper?

A He called me in St. Louis.

Q Anything else?

A And I think he discussed with me the slow moving inventory.

THE COURT: About when was that?

THE WITNESS: I don't recall exactly.

Q Can you recall discussing with Mr. Wilson or anyone else or forming your own opinion that one of the problems Goldman, Sachs was having with Penn Central was the fact

that they did not have 100 percent bank line coverage?

A Well, again, as I recall, from reading these blue sheets, Wilson had told them that the commercial paper might run down without full bank line coverage because most of the investors liked full bank line coverage.

THE COURT: You were aware of that?

THE WITNESS: Yes, sir, I was aware of that, and I refreshed my memory by reading these blue sheets, your Honor.

Q Were you also aware, Mr. Levy, that a lot of commercial paper investors wanted to know whether commercial paper was backed by bank lines in case something went wrong?

A I can't testify to that. As I said, I did testify to the fact that Wilson told them that commercial paper would run down somewhat without full bank line coverage.

Q But you were not aware of the fact that a lot of commercial paper investors wanted to know if commercial paper was backed by bank lines in case --

A I believe that to be the case.

Q And were you also aware that Goldman, Sachs, during this period of time, normally encouraged full bank line coverage for its investors?

A I believe we did.

Q To the best of your knowledge, Mr. Levy, when did

Goldman, Sachs first ask Penn Central to increase its bank line coverage or suggest that it increase its bank line coverage?

A I don't recall that, when we did that, Mr. Breindel.

Q What is the earlist instance you can recall?

A I really don't remember the date, Mr. Breindel.

Q You are aware that on or about February 6, 1970, the subject was discussed?

A I said I did refresh my memory by reading these blue sheets.

Q But to the best of your recollection that's the first day you now recall?

A It could have been. It could have been earlier. I just don't remember.

THE COURT: Mr. Levy, as general and senior partner and as member of the management committee, what were your responsibilities vis-a-vis the commercial paper department? I realize you had no specific responsibility. What responsibility was there?

A Well, Wilson and Van Cleave were general partners of the firm, they were charged with that responsibility. They looked to John Weinberg, who was in charge of the General Fixed Income Department, for any problems that would

occur. We trusted their credit judgment 100 percent. And in case of problems or they thought what might be problems they'd come to the new business partner, such as me, on this Penn Central thing, and discuss it.

THE COURT: You happened to be the new business partner?

THE WITNESS: That's right.

A (Continuing) What we did at that time, as I recall, because of the tight money situation, and because people, the buyers of Penn Central notes of other issuers, wanted maturities of their own, and because we were having difficulty financing our own inventory, because of the tight money, we were losing money on the carry, we limited the amount of inventory that we would have.

THE COURT: I have heard about that. But I am just trying to find out structurally --

THE WITNESS: That was the Management Committee did that, you see.

THE COURT: In other words, you had authority but not responsibility --

THE WITNESS: That is correct.

THE COURT: -- of a specific nature?

THE WITNESS: That is correct, your Honor.

Q Mr. Levy, would you please look at Plaintiff's

Exhibit 21; the memorandum dated February 27, 1969.

A Yes.

Q Do you recall reading this on or about February, 1969?

A I read all the memorandums. But I don't recall reading this particulr one seven years ago. But this says that, they didn't ask him for 100 percent bank lines at the time, as I understand it.

Q What is your understanding of this memorandum?

A Well, this says, "I advised Bill Gerstnecker that their plan for the increase by 50 million in c/p outstandings to 150 million did not require the Penn Central to increase their lines of credit due to the temporary nature of the program and their access to credit. If they determined subsequently to hold at or near the upper limit, I told Bill we felt they should increase lines by 25 million to 50 million."

Q Did they subsequently hold out on any of the upper limit?

A I don't know, Mr. Breindel.

Q Who is the author of this memorandum?

A Pieter Fisher. Pieter Fisher is presently a partner. He wasn't then. He was also a new business man involved in the Philadelphia area and Penn Central was part

of his responsiblities, covering them on a routine basis.

Q Was he the new business man assigned at this time to the Penn Central account?

A Yes.

Q What were the duties of a new business man such as Mr. Fisher?

A Well, he'd visit with them and ask how he could help them and try to do business generally just like any other new business man would do.

Q To whom did the new business man report?

A He reported to John Whitehead in charge of new business, and he'd also, in this case he reported to me because I had something to do with the Penn Central as well.

Q Did he report to anybody in the commercial paper department?

A Beyond posing them on a memorandum of this kind, I don't think -- he probably talked to Wilson about this. I'm not sure.

Q Wilson wasn't his boss?

A I know it but he probably did talk to Wilson, because Wilson is on the list that received this memorandum.

Q Were you a new business man also assigned to the Penn Central account?

A I said I was.

Q At the same time, the Penn Central account had two new business men?

A That is often the case with Goldman, Sachs, we've got sometimes --

THE COURT: You were a new business man because of your personal relationship?

THE WITNESS: That's correct, exactly right, although I didn't have the day-to-day job of calling on them and so forth and speaking with them.

THE COURT: I assume not.

THE WITNESS: I was in sort of a high level on it.

Q Who assigned Mr. Fisher the task of being new business man?

A He was new business man in the Philadelphia area and Penn Central was headquartered in Philadelphia, and so it was normal that he would cover the account.

Q Generally speaking, at that time, new business men were assigned on a geographical basis?

A Primarily, yes, although there were some exceptions.

Q To the best of your knowledge, Mr. Levy, Plaintiff's Exhibit 21 was sent to you because you were the new business man on the account?

A Mr. Breindel, and your Honor, I get a copy of every

new business memorandum that passes through Goldman, Sachs & Co., this one and all, including all companies. And I do my best to read them all.

Q Mr. Levy, are you aware that sometime on or about September 11, 1969, Goldman, Sachs and Penn Central had another meeting at which time bank lines were discussed?

THE COURT: September 11?

MR. BREINDEL: Yes.

A They may well have had, Mr. Breindel. I don't recall at this moment. I'm not saying there wasn't such a meeting.

Q In your booklet there is a memorandum dated September 19, 1969, from Mr. Vogel.

THE COURT: Is that the one that is misdated?

MR. BREINDEL: Yes, your Honor.

A I've got it, yes.

THE COURT: The first page?

A Yes, I have it here.

Q Do you recall at this time reading that memorandum?

A Again, Mr. Breindel, I can't recall reading the memorandum. I told you I probably read them all, but I don't recall this particular one. I'm sure I read it at the time.

Q In the first paragraph of this memorandum, it is stated, "R.G. Wilson discussed the nuances of the current

commercial paper market, particularly the stronger emphasis on bank line coverage in the minds of investors."

Do you recall Mr. Wilson discussing that subject with you at or about the time of this memorandum?

A No, sir, I don't recall his discussing that subject with me at the time.

Q Do you recall Mr. Wilson discussing with you at or about this time that he would suggest an increase in the Penn Central bank lines but would not insist upon it?

A He may have discussed it with me, but I don't recall that he did, Mr. Breindel. I'm not saying he didn't. I'm not sure that he did.

Q Mr. Levy, in shortness, do you recall anything in this memorandum at all?

A No. But, Mr. Breindel, I don't recall it but I don't deny that he may have discussed some of this stuff.

Q I appreciate that.

A Thank you.

THE COURT: Just make clear to me, Mr. Breindel, you are not contending that Mr. Levy was at the meetings referred to, are you? You are asking him whether he remembers receiving a copy of this and acquainting himself with the contents of if at the time?

MR. BREINDEL: In particular, the time pertaining

to bank line coverage.

THE COURT: Right. I gather he says he does not. Although he doesn't deny he may have read it at the time.

A That is exactly right, your Honor.

Q Mr. Levy, were you aware that on or about December, 1969, there was another meeting between Penn Central and Coldman, Sachs at which time the subject of bank lines was discussed?

A There may have been, Mr. Breindel. I don't recall that there was.

THE COURT: What date now?

MR. BREINDEL: December 9.

Q Would you take a brief look at that, Mr. Levy, and tell me if there is anything in there that you can recall?

THE COURT: The blue sheet of that date.

MR. BREINDEL: Plaintiff's Exhibit 22, your Honor, yes.

Q Let me point out to you, Mr. Levy, that this memorandum, it is not indicated that this was sent to you.

A I know. I just noticed that myself.

Q Maybe my first question should be, do you recall whether or not you ever received this?

A As I said, I normally get copies of all credit

memorandums of all companies. I don't know why I was particularly excluded from this one.

Q Is there anything in the memorandum which refreshes your recollection as to whether or not you received it?

A No, sir, there is not.

Q In the memorandum it is stated, "J.A. Vogel brought up the subject of line coverage, pointing out that there are now investors that will not buy commercial paper unless there is 100 percent coverage and that although we do not feel 100 percentage coverage is necessary, questions are being asked in this regard."

Do you remember having any discussions at this time with Mr. Vogel and Mr. Wilson about this subject?

A No, sir, but I think I said before that I agreed that investors at that time were liking 100 percent coverage, and we told Penn Central that their notes would run down if they didn't have 100 percent coverage.

THE COURT: When you say we told that to Penn Central, what are you referring to?

THE WITNESS: I'm referring to that meeting on February the 6th, I guess it was.

THE COURT: The one you were present at?

THE WITNESS: The one I was present at. So I have

already testified to that.

Q Were you aware, by the way, prior to the February 6 meeting that Goldman, Sachs had previously requested Penn Central to increase its bank line coverage to 100 percent?

A I'm not sure, I'm not positive that I knew about it. I'm not positive I didn't know about it. I just don't recall whether I did or didn't.

Q Okay. Now, going on to the February 4, 1970 telephone conversation with Mr. Wilson, to the best of your recollection, Mr. Levy, tell us what Mr. Wilson said to you and you said to him, when you were in St. Louis.

A I just don't recall. He called me up and told me, as you refreshed my memory, that he was disturbed about the Penn Central, would I set up a meeting, would I call Bevan and set up a meeting, which I believe I did.

I don't know whether I did it that night or the next morning or when I came back, but, in any event, the meeting was set up and held on February the 6th.

THE COURT: I take it the very fact that you set up the meeting meant that you agreed that it was of some seriousness?

THE WITNESS: That's right. That's right. If Wilson's worried, I've got to be worried.

THE COURT: Okay. He's your worry man on that

score?

THE WITNESS: That's right, yes, sir.

Q Mr. Levy, did you ever attend a meeting with a representative of Penn Central and other representatives of Goldman, Sachs after the February 6 meeting?

A I may have. I'm not sure about that, Mr. Breindel.

Q Did you ever attend a meeting, such a meeting before, other than the meeting you described in August of 1968?

A I don't recall that I did, although I may have, Mr. Breindel.

Q Do you recall in your telephone conversation with Mr. Wilson on February 4 or when you saw him on February 5 his telling you that the most important thing Penn Central could do in view of the recent loss report was to get another $100 million in bank line coverage?

A I don't recall that he did that but I know that at the meeting he urged them to try to get additional bank line coverage.

Q Prior to the meeting, did you and Mr. Wilson have a discussion as to what position you would take at the meeting?

A We probably did but again I don't recall what we said back and forth, but I'm sure we did have a meeting

prior to the meeting.

Q To the best of your recollection, did Mr. Wilson let you know before the meeting on February 6 that he was going to recommend to Penn Central that they get 100 percent bank line coverage?

A He probably did, although I don't recall that he did.

Q Did Mr. Wilson do most of the talking at the meeting?

A He did.

Q And it was Mr. Wilson who asked, who made the recommendation for 100 percent bank line coverage?

A Yes, sir.

Q Would you look at the blue sheet dated February 5, 1970, Mr. Levy. It has been marked as Plaintiff's Exhibit 11.

A Yes, sir.

Q You have seen that before today, is that correct?

A Yes.

Q And you saw that on or about February 5?

A Yes, sir.

Q The first sentence of the second paragraph states: "I told John it was unfortunate that we did not have some indication of the magnitude of the toll losses for 1969."

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Is that statement accurate?

A I'm sure it is accurate, if he writes it down. I don't question it, that he said that.

Q Was it accurate as far as you were concerned, that is, as of February 4, 1970, you did not have some indication of the magnitude of Penn Central's toll losses for 1969?

A I did not.

Q The statement goes on: "As we are going to need a story to tell existing holders of Penn Central's paper and new purchasers of paper."

What was your understanding of the word "story?"

A An explanation.

Q And do you know what explanation was given the purchasers?

A I have no idea.

Q Is the information in paragraph 1 of this blue sheet with respect to Penn Central's tight cash position for the first six months of 1970 and its cash requirements of approximately 200 million, was this information at that time confidential information?

A I don't know who else -- O'Herron -- I think he is talking about a conversation with John O'Herron, and I don't know who else O'Herron told it to but it was certainly confidential as far as we were concerned. We held it to be confidential.

Q As far as you were concerned, it was non-public information?

A Yes, sir, although again I say I don't know who O'Herron told it to besides ourselves.

Q As far as you were concerned it was non-public information; is that correct?

A Right.

Q Do you recall discussing with Mr. Wilson on February 4, 5 and 6, 1970, that you were going to ask Penn Central to buy back 10 million of its commercial paper from your inventory?

A Yes, sir.

MR. PIEL: Objection. It is compound and assuming facts not in evidence.

MR. BREINDEL: I will withdraw the question.

Q Turning to the meeting on February 6, 1970, Mr. Levy, a blue sheet, Plaintiff's Exhibit 12, I believe it is your testimony that you can't recall anything else about the meeting other than what is set forth in this memorandum.

A That's correct.

Q And to the best of your knowledge, this memorandum is an accurate recollection of what was said?

A Yes, sir.

Q To the best of your knowledge, Mr. Levy, after the February 6, 1970, luncheon conference at Penn Central, did Goldman, Sachs ever again request of Penn Central that it increase its bank lines to 100 percent?

A I am not sure. It probably did, but I'm not sure that it did, Mr. Breindel.

Q There is a blue sheet dated March 23, 1970,

authored by Robert Wilson.

A Do you have a copy of that here?

Q You should.

A No, I don't have it.

THE COURT: It is the last one.

THE WITNESS: The last one I have is March 5.

THE COURT: Isn't there one after that?

THE WITNESS: Not in my book, your Honor.

THE COURT: You have the expurgated edition. Plaintiff's Exhibit 5?

MR. BREINDEL: 14, your Honor.

THE COURT: Then I don't have it either.

I have the same thing in this cumulative book but marked Plaintiff's Exhibit 5. 14 is the actual number?

MR. BREINDEL: Yes, your Honor.

Q Mr. Levy, do you recall receiving Plaintiff's Exhibit 14?

A It has my name on it so I must have received it, Mr. Breindel.

Q Were you aware that Mr. Wilson prior to his telephone conversation with Mr. O'Herron was going to recommend to Mr. O'Herron that Penn Central increase its bank line coverage, among other things, if it wanted Goldman, Sachs to increase its inventory limit of $5 million?

gwrm 4 Levy-cross

A Say that again. Repeat that.

Q Plaintiff's Exhibit 14 refers to a telephone conversation between Mr. Wilson and O'Herron?

A Right.

Q In this telephone conversation, Mr. Wilson states that he told Mr. O'Herron: "I told him it was not my understanding and that in fact" --

A I see this, yes, sir.

Q He goes on to say, "Goldman, Sachs felt that a $5 million ceiling was appropriate until such time as they obtained 100 percent line coverage," and some other things.

Did Mr. Wilson discuss this with you prior to telling this to Mr. O'Herron?

A He may well have. I don't recall that he did. I am not sure that he did.

Q If a decision had been made by Goldman, Sachs to impose these conditions upon Penn Central as a requirement to get Goldman, Sachs to increase its inventory limit, did you participate in that decision?

A Repeat your question. I am not sure I understand it.

Q Let me ask it this way. Was this statement, this decision by Mr. Wilson that Goldman, Sachs would not increase Penn Central's inventory limit above $5 million until it

obtained 100 percent coverage, completed some long-term financing and started to reduce the operating losses a decision made by Mr. Wilson alone or did you participate in it?

A I said I may have participated in it. I don't recall that I did or didn't, Mr. Breindel.

Q I believe you previously testified to your understanding as to why Penn Central could not get bank lines; is that correct?

A I said Penn Central and others.

Q In view of that understanding, can you tell me why it was that Goldman, Sachs throughout this period nevertheless frequently asked Penn Central to get 100 percent bank line coverage?

A Because the paper was running off and if they wanted to keep it out they would have to -- investors were insisting on full line coverage in order to keep the paper out and that's the reason we kept asking for it.

THE COURT: In other words, you knew it was tough but you thought it was the only remedy?

THE WITNESS: Yes.

THE COURT: Did you think it was feasible?

THE WITNESS: Yes, sir. They could get it and they did get some additional bank lines, I believe.

THE COURT: Lines or loans?

THE WITNESS: Lines and loans both, I believe.

Q When you say "subsequently," is that subsequent to your meeting on February 6, 1970?

A I believe they did, Mr. Breindel.

Q What is the basis for your belief, Mr. Levy?

A My basis for belief is I think in one of these memorandums it said that.

Q You wouldn't have an independent belief outside of these memoranda?

A No.

THE COURT: It isn't a question of what your belief is. It is a question of whether it is true or not.

THE WITNESS: The record shows that.

Q Who is Mr. Henry Fowler?

A Mr. Henry H. Fowler is a partner of ours. He was formerly Secretary of the Treasury of the United States in the Johnson administration.

Q Was he ever assigned as the new business man to the Penn Central account?

A No, but he is a general man and he was a good friend of Mr. Saunders. They came from the same town in Virginia and they were boyhood friends.

Q Did there come a time when Mr. Fisher was relieved

as new business man of the account, Penn Central?

A I doubt it. I don't believe he was. Maybe he was.

Q When did Mr. Fisher first come to work for Goldman, Sachs?

A I am not sure. He has been there quite sometime. I am not sure of the exact time.

Q During the period from 1966 on, what were Mr. Fisher's duties?

A He was always a new business man in the new business department calling on clients and that kind of thing.

THE COURT: Does a new business man get any business and keep everybody happy?

THE WITNESS: He solicits and covers the account generally and tries to have a close day-to-day relationship with the account.

THE COURT: People do get older.

THE WITNESS: People do change. Fisher happens to be a young man, much younger than I am, and I guess he is in his early 40's or middle 40's. Yes, sometimes what happens is the people in the company change and a fellow might rub you the wrong way and you put another new business man in.

Q Did Mr. Fisher have any duties in connection with commercial paper apart from being a new business man?

A All our people try to get new business in commercial paper, private placements, public offerings of bonds or stock, commission business, all sorts of things.

Q Can you identify Plaintiff's Exhibit 51 for us?

(Pause)

THE COURT: I think the question is whether you can tell us what it is.

THE WITNESS: I don't recall that I have ever seen it before, your Honor.

Q You have no recollection of having seen this before?

A No.

Q On the first page --

THE COURT: Is it in evidence?

MR. BREINDEL: No, it is not.

Q On the first page of Plaintiff's Exhibit 51 for identification --

A It has no date on it either. I have looked for a date.

THE COURT: Right.

Q Mr. Levy, in 1969, about approximately how many companies were issuing commercial paper?

A I don't know. I would guess 150 or 200, somewhere in there, maybe more. I just don't recall.

Q Do you recall approximately how many commercial

paper issuers Goldman, Sachs alone handled?

A I thought that's what you were referring to. I think we handled about 150 or 200 issuers.

Q It is your testimony that you have never seen Plaintiff's Exhibit 61 for identification previously?

A To the best of my knowledge, I have never seen it. It's got no date on it or anything else.

Q Mr. Levy, were you aware of the use of the proceeds of the sale of the commercial paper by Penn Central, that is, what Penn Central intended to do with the proceeds they received from the sale of their commercial paper?

A Well, generally, it was used to finance their needs.

THE COURT: Do you have any special information about it or you are just assuming naturally they would use the proceeds the same as other would use theirs?

THE WITNESS: That's right. I have no special knowledge they would do anything particular with it.

Q You didn't make any investigation as to what they would do with it?

A Personally, no.

Q You were concerned with that; is that correct?

A I left that to Mr. Wilson and his colleagues.

Q What is it you left to Mr. Wilson?

A The determination of what they did with it.

Q Was it your understanding during this period of time, Mr. Levy, that the proceeds of the sale of commercial paper were to be used for current transactions or current working needs?

A I think that's in general what proceeds of commercial paper are used for.

Q Was that pretty well understood by the Goldman, Sachs partners?

A I think it was, but again I have no specific knowledge on this particular instance.

Q In your opinion, did Goldman, Sachs, by offering commercial paper for sale, recommend that commercial paper?

A Well, I think that obviously if we offer it for sale we must think that it is a viable piece of paper and it would be met at maturity. Otherwise we wouldn't offer it.

Q Mr. Levy, in your opinion, did commercial paper investors believe that Goldman, Sachs made a credit investigation of the commercial paper issuers it handled?

A I would guess they did, although you would have to ask the investor that question.

Q Why would you guess that they did?

A I mean if I bought something I would either want to know something about it or ask the fellow if he made a

credit investigation.

Q Did Goldman, Sachs ever engage in distress selling of Penn Central commercial paper from its inventory?

MR. PIEL: If your Honor please, we are going into a lot of topics that are outside the scope of the direct here. It seems to me after very clear testimony by Mr. Levy he is not involved in the operations of the department, it would save the Court's time if these questions would be saved for the next witness, who runs the department.

MR. BREINDEL: I might point out that the Federal Rules of Evidence do not prohibit one from exceeding the scope of direct on cross examination.

THE COURT: I haven't had occasion to study the new rules on that point, but I assume that whatever answer you got exceeding the scope would make him your witness on that point.

MR. PIEL: Rule 611(b) now says: "Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may in the exercise of discretion permit inquiry into additional matters as if on direct."

I was just suggesting that since we have a well-informed witness coming right along who could cover all this ground, the Court's discretion might be exercised in favor

of saving time.

THE COURT: I am a little confused. What were you reading from?

MR. PIEL: Rule 611(b) of the Rules of Evidence.

THE COURT: Either we have different versions or -- what I am reading from says: "A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of judgment, the judge may limit cross-examination with respect to matters not testified to on direct-examination." Perhaps I don't have the final version.

MR. PIEL: I have something that says 1975 Edition, so I was trusting it.

THE COURT: I am willing to allow these questions but I do wonder, Mr. Breindel, if you know that Mr. Levy is not really the man who can answer the questions with firsthand knowledge, I would rather get depth on it with Mr. Wilson. Mr. Levy does not purport to be the whole organization.

MR. BREINDEL: On the other hand, your Honor, I think it has been demonstrated this morning Mr. Levy's connection with the commercial paper sales of Penn Central was more than nominal.

THE COURT: Yes, more than nominal, but how much

more?

MR. BREINDEL: Would you repeat my question.

A You asked did I know of any distressed sale of Penn Central?

Q Yes.

A I am sure Wilson, when he wanted to get rid of inventory, cut the prices. He might increase the rate to get rid of paper generally.

Q In the ordinary course of events, Mr. Wilson wouldn't consult with you?

A He would not.

Q I believe you testified as to the representation of Mr. Bevan and Mr. Saunders; is that correct?

A I did.

Q You also testified as to the post-bankruptcy position of Mr. Gorman?

A Yes, sir.

Q Do you know the post-bankruptcy position of Mr. Saunders and Mr. Bevan?

A I do not.

Q Do you still have the same opinion of them as you did when you were selling their paper?

A That's a tough question. Obviously I don't think they are as smart as they were and some things were brought

out, you know, that doesn't look good for them, so I can't honestly say I do. Yes, my opinion is somewhat changed.

Q Do you have an opinion of Mr. O'Herron when you were selling Penn Central?

A Yes; he was a fine fellow and an able gentleman.

Q Do you still have that opinion of Mr. O'Herron?

A I do.

Q Are you aware that in the fall of 1969 Mr. O'Herron advised Goldman, Sachs that he anticipated that Penn Central Railroad's operation for the last quarter of '69 would be in the black?

A He may have and I may have read one of those memorandums. I just don't recall it. He could have. But forecasting is a very difficult thing, Mr. Breindel.

Q It is very difficult, it is very unreliable, isn't it?

A It is.

Q Did you mention that to Mr. Bevan when you had your discussions with him about the railroad's future?

A No, I just happen to know inately forecasting is a very difficult science.

Q In all your discussions with Mr. Bevan about his projected future for the railroad, did the discussion come up of the difficulties and inaccuracies of forecasting?

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A You said in all my discussions. I think I had maybe two or three, at the most, discussions with Mr. Bevan on anything about Penn Central.

Q Okay. In your two or three discussions with Mr. Bevan about Penn Central, did either he or you bring up the topic of the difficulties and unreliability of forecasting?

A No, we didn't, to the best of my knowledge.

THE COURT: All businessmen are called upon to forecast, no matter how difficult it is?

THE WITNESS: They are.

THE COURT: The intelligent thing is to recognize the perils but it has to be done?

THE WITNESS: All of them have to have a budget for the next year and some five years and ten years.

THE COURT: And you have to rely on them and you are foolish --

THE WITNESS: To take it as gospel. They are in the best position to know of anybody.

THE COURT: That's right, I understand that.

Mr. Levy, this might be as good a time as any to intervene.

I am left with the puzzled feeling that we are all here in a dream and that Penn Central really never needed to go bankrupt and it was all just crazy.

Is the message you are trying to get across that your estimate of the situation is that Penn Central did not need to go into reorganization?

THE WITNESS: No, sir, not mine. What I am trying to do here is to get to you, sir, and Mr. Breindel and everybody else that we honestly didn't think on March 13 or any time that Penn Central would go bankrupt. Otherwise we would have stopped selling the notes. Now, we made a mistake, obviously, but it wasn't, you know --

THE COURT: So far as the question of sincerity is concerned, without making a finding from the bench, I thoroughly understand what you are trying to tell me. The reason that I asked what I did is because Mr. Piel seemed to me to make a distinction between the business forecast aspects of the thing and what he described, I think, as the political aspects of it.

Do you have an explanation as to how it happened that Penn Central did go into reorganization? What didn't you know that if you had known might have led you to a conclusion as to what actually occurred?

THE WITNESS: I can't answer that, your Honor. It is not because I am withholding anything. I just don't know enough about it. I think one of the things --

THE COURT: Looking back at it now, do you ever

say to yourself, "Now I understand why it happened. If I had only known so-and-so at the time"?

THE WITNESS: I think two things probably, your Honor. One, the railroad operating losses were more extensive than even the Interstate Commerce Commission in its wisdom and the management of the Penn Central had anticipated, which caused a cash drain, and in line with the tight money at that time, that particular point in time. Had money been easier and credit been easier, they probably would have been able to do some of this financing that we thought they would do in February that they couldn't do when they went to do it in May or June.

THE COURT: Do you feel at any time Penn Central withheld any information from you that, in accordance with the standards of your profession, they should have given you?

THE WITNESS: No, sir. I think they were telling us the truth as they knew it.

THE COURT: They didn't understand the seriousness of their own predicament?

THE WITNESS: Probably.

THE COURT: Do you object to all my questions, Mr. Piel?

MR. PIEL: No. I was just moving up here not to get ready to object but to try to hear you over those sirens

outside.

BY MR. BREINDEL:

Q Mr. Levy, do I take it from what you said that if you had felt that Penn Central was going into bankruptcy you would have stopped selling the notes?

A You are darn right.

Q You stopped selling their notes, so you believed they were going into bankruptcy?

THE COURT: That was a good try, Mr. Breindel. Even if he said yes to that I wouldn't agree.

Q There never came a time when Goldman, Sachs stopped selling the notes of Penn Central?

A Maybe for 24 hours or something like that.

Q Was Goldman, Sachs selling Penn Central notes on June 20, 1970?

A I don't know whether we were or not.

THE COURT: Let's get the record straight. I assume there is no dispute. When did Goldman, Sachs stop selling the notes?

MR. PIEL: If your Honor please, Goldman, Sachs stopped selling in terms of people not buying, there is an exhibit in evidence here which is Exhibit CU. That will show exactly what was happening.

THE COURT: There is an implication in your

question, Mr. Breindel, that Goldman, Sachs made a policy decision to refrain from selling. Are you suggesting that?

MR. BREINDEL: Let me ask.

Q Did there come a time when Goldman, Sachs made a policy decision to stop selling Penn Central commercial paper?

THE COURT: Whether there were customers or not, you mean?

MR. BREINDEL: Yes.

A I believe for one day we stopped selling. I am not 100 percent sure.

Q To finally stop selling, not simply for a one-day period?

A I am not sure of that. We probably did, but I am not sure. You will have to ask Mr. Wilson that.

Q Mr. Wilson will be more familiar with that?

A Yes. He will know all about that.

Q In the ordinary course of events, if a decision was made to stop selling Penn Central commercial paper, would Mr. Wilson consult with you before he did that?

A He might tell me, but he had full responsibility and final authority to issue, to sell or to not sell.

Q Do you ever recall Mr. Wilson asking you for permission to stop selling Penn Central commercial paper?

A I don't recall that he did.

Q Do you ever recall Mr. Wilson advising you that Goldman, Sachs should stop selling Penn Central paper?

A I don't recall that he did. Remember, Mr. Breindel, I said for one afternoon he talked to me about not selling.

Q Tell us about that afternoon.

A I don't recall it, I don't recall the details, but I think it is in one of these memorandums.

Q To the best of your recollection, what did Mr. Wilson say to you and what did you say to Mr. Wilson on that afternoon?

A I don't remember exactly.

Q What do you remember about that conversation?

A As I recall, I think he told me he didn't want to sell any -- he wanted to stop selling until he got more information from somebody about something. This was late one afternoon. He got the information I recall the next morning and continued to sell.

Q Do you recall as of that time whether Goldman, Sachs had any Penn Central notes in its inventory?

A It may or may not. I don't recall.

Q You testified as to the officers and directors of Penn Central; is that correct?

A Yes.

Q Did these officers ever refuse any request from Goldman, Sachs for information?

A They may have. Not as far as I know.

Q Did they ever request that information they gave Goldman, Sachs be kept confidential?

A Except for that one meeting I wasn't present?

Q To your knowledge.

A To the best of my knowledge, no.

Q Did any Penn Central officer or director whom you knew ever refuse to give you any information about Penn Central that you asked for?

A Well, I never asked them for any.

Q You never asked Mr. Bevan or Mr. Saunders --

A Except at that one meeting.

Q At the February 6 meeting?

A Yes.

Q The February 6, 1970, luncheon was the only occasion on which you asked a Penn Central officer or director for information about Penn Central?

A I didn't actually ask them. Wilson asked them. I was a listener and I probably participated, but I don't know to what extent. I think that was the only meeting after our initial meeting that I was present.

MR. BRAINDEL: Is this a good time for the morning

break, your Honor?

THE COURT: We will take a short recess.

(Recess)

Q Mr. Levy, prior to February 5, 1970, had you and Mr. Wilson ever agreed to place an inventory limit upon the commercial paper of any specific issuer?

A I don't know the date, but we did, the management committee agreed to place a limit on a total inventory.

Q An overall limit?

A Overall limit. I don't remember when that was.

Q My question was addressed to the fact that prior to February 5, 1970, had Goldman, Sachs, had you and Mr. Wilson ever discussed placing an inventory limit on the inventory of any one specific issuer?

A I don't believe that we had.

Q So that the first instance that you know of, you can recall discussing an inventory limit on a specific issuer of commercial paper with Mr. Wilson, was Penn Central; is that correct?

A Well, the first instance I had knowledge of, because not too many of my clients issued commercial paper, and since I was involved with Penn Central, he probably discussed that particular one with me.

THE COURT: Are you suggesting there may have been limitations on specific issuers that you didn't know about?

THE WITNESS: Correct. Yes, your Honor, exactly right, because I'd have no way of knowing.

jkrm 2 Levy-cross

Q My question to you is, the first instance you can recall is Penn Central?

A I personally recall, yes.

Q Mr. Levy, there's been some testimony here about all these Board of Directorships.

A Yes.

Q Did the Boards you sit on, any of those companies issue commercial paper?

A One or two of them did.

Q Just one or two of this whole list?

A Let me take a look and I will tell you exactly which ones issued commercial paper. I've got it.

Q That's FE and FD?

A I've got it. May Department Stores issue commercial paper. Talcott National used to issue commercial paper but not through us.

Q May issued it through --

A Through us.

MR. PIEL: Did you say not through us?

THE WITNESS: May issued through us, May Department Stores issued through us. Talcott National issued commercial paper but not through us. They sold directly. That's all of those companies that issued commercial paper.

Q Does that include Defendant's Exhibit FE also?

A That's the ones that I'm no longer director?

Q Yes.

A I think Keebler used to issue commercial paper. I'm not 100 percent sure of that. That's the only one on that list.

Q I believe you testified that Goldman, Sachs has a long-standing policy to have representation on the Board of Directors of a company for whom Goldman, Sachs issues securities to protect the security purchaser?

A Initially, initial public offering, normally.

Q Do you have a similar policy to protect the commercial paper investor?

A If we issue the paper, we think it is viable paper, otherwise we wouldn't issue it.

Q Isn't that true if you sell a common stock, you think it is a viable common stock, otherwise you wouldn't sell it?

A Don't forget commercial paper is outstanding for 30, 60, 90, 270 days. Common stock issue is forever.

Q So that Goldman, Sachs never did have a policy of placing a representative on the Board of Directors of a commercial paper issuer because it was a commercial paper issuer?

A No.

Q Going back to February 6, 1970 -- and if it will refresh your recollection you can look at the blue sheet of that day, which is Plaintiff's Exhibit 12, at the February 6 luncheon, at the Recess Club, you and Mr. Wilson told Mr. Bevan and Mr. O'Herron that $5 million at any one time would be Goldman, Sachs' inventory limit on their commercial paper; is that correct?

A Yes, sir.

Q And can you tell me who decided upon this limit?

A I believe Mr. Wilson did.

Q And did you concur with his decision?

A Yes, I did.

Q Do you know what the reasons for this limitation were?

A Yes, sir. I think I do, anyhow.

Q What is your understanding?

A My interpretation of it was that commercial paper, the only purpose of inventory is to facilitate the offering, and at that time the buyers of commercial paper were demanding specific dates and in our inventory -- say we bought today; we might have bought 90 days here from, and they might not want three months from now, they'd want two months and twenty days or four months or whatever it might be, and furthermore, as I told you before, inventory generally was

very tough to finance, and we were losing money on the carry of inventory, and that's why we limited inventory generally, and in this case since Penn Central was running down, there was no point in having -- and the buyers wanted specific maturities, there was no point in having more than 5 million or so commercial paper.

Q Your understanding is those were the only reasons for which Goldman, Sachs placed a $5 million limit on Penn Central's paper?

A It was to my understanding the only reason, yes.

Q What did you mean when you said the paper was running down?

A I told you that there had been 200 million, and Wilson had said it was going to come down unless we had full line coverage.

THE COURT: You mean the amount outstanding?

THE WITNESS: Amount outstanding, yes, sir.

Q And based on what you have said, if Penn Central had obtained full line coverage, would you have increased their limit?

A You will have to ask Mr. Wilson that.

Q And to the best of your knowledge, was this limit which was imposed on Penn Central on February 6, 1970, to be applied under all circumstances; was that your understanding

at the time?

A No. I think Wilson told them, you know, if they needed a little more for a day or two, he'd be glad to accommodate them. I believe he told them that, but I'm not sure of that. But that will come out in his testimony, I believe.

Q Do you have any recollection or understanding that as of this time that limit was to be imposed under all circumstances?

A I don't remember.

THE COURT: Mr. Levy, in your organization, if somebody wanted to change that rule -- not that rule, that determination, who would have had the authority to do it and what would they have had to do?

THE WITNESS: Anybody on the Management Committee or me or just -- this was Wilson's own imposition; it wasn't the Management Committee's imposition. Wilson could have changed it.

THE COURT: Could he have changed his mind a week later?

THE WITNESS: He could have, yes, your Honor.

Q Mr. Levy, I'm going to read to you a question and an answer from your deposition and ask if it refreshes your recollection in connection with your previous answer: --

THE COURT: Is this from the deposition?

MR. BREINDEL: Yes. --

"Q Were you aware that on March 23, 1970, Wilson told O'Herron that a $5 million ceiling on inventory was appropriate until such time as they obtain 100 percent line coverage, completed some of these long-term financings and started to reduce the operating losses?"

Your answer: "I already testified that on February 6 we told them we were limited to 5 million. Presumably that limit still was in being and we just reinforced by what Wilson said the fact that we would not under any circumstances inventory more than $5 million."

Does that refresh your recollection?

MR. PIEL: If your Honor please, the document, the blue sheet which was first being referred to in the questions that he quoted from is a document which your Honor received in evidence over our objection for limited purposes, and on the ground that we are now dealing with questions of knowledge and understanding and information and the like ten days after the date of the purchase in this case I'd like to object to this question.

THE COURT: I think, if I understand the testimony, the deposition testimony, even if the question is asked about March 23, the answer that was given was about February 6.

MR. BREINDEL: I believe that's crystal clear from the deposition, your Honor.

THE COURT: So I am willing to have it there. I don't quite understand how you can say under any and all circumstances. Life changes. But under the circumstances that then existed I assume you were not going to go over 5 million. If circumstances changed in any significant way, perhaps you'd change your approach?

THE WITNESS: Exactly right, your Honor.

Q Now, Mr. Levy, going back to the $5 million limit on inventory, was the fact of the announcement of Penn Central's railroad losses of $56 million a factor in the imposition of that limit?

A It could have been, but again you have got to ask Mr. Wilson that question.

Q You don't know whether or not it was?

A It probably was, but I'm not 100 percent sure.

Q Were you aware, Mr. Levy, that on or about February 9, 1970, Penn Central purchased $10 million of its commercial paper back from Goldman, Sachs?

THE COURT: Was he then aware -- you mean at that time?

MR. BREINDEL: Yes.

A I believe I was, your Honor.

jkrm 9 Levy-cross

Q And this subject was discussed at your luncheon on February 6, 1970?

A I believe it was, Mr. Breindel.

Q Can you recall anything about this particular discussion other than what is set forth in the corresponding blue sheet?

A I do not.

Q Do you recall prior to that luncheon discussing this subject with Mr. Wilson?

A We may well have. I don't recall if we did. But we may well have.

Q To the best of your recollection, was this decision to have Penn Central repurchase 10 million your decision, Mr. Wilson's decision or a joint decision?

A I think it was primarily Mr. Wilson's decision in which I concurred.

THE COURT: Was this a pretty exceptional event when the issuer purchased back such a substantial amount of its own notes?

THE WITNESS: I don't really know, your Honor. But we agreed that we were only going to carry 5 million. I guess we had 15 million on inventory, whatever it was.

THE COURT: Do you recall in your experience at Goldman, Sachs any other buy-back of this dimension?

THE WITNESS: I'm sure there was, your Honor, but again, I had very little to do with the --

THE COURT: I know. I can only ask you what you recall.

THE WITNESS: No, sir, I don't remember that, sir. I don't remember any other case, your Honor.

Q Mr. Levy, do you recall any general discussions at Goldman, Sachs as to changing its commercial paper business from one which was primarily based on inventory to one which was based on special order or tap issue basis?

A I do recall that.

Q Who participated in these discussions?

A I think the commercial paper partners, Wilson and Van Cleave, and I don't know who else from there, and the Management Committee.

Q Do you recall the conclusion of these discussions?

A We decided not to do that, generally speaking.

Q You did, however, decide that Mr. Wilson could do it, try it on a few people; is that correct?

A That's correct.

Q And these discussions were in May of 1970?

A I believe somewhere around there. I'm not sure of the exact date.

Q Approximately May of 1970?

A Approximately.

Q Have you ever heard of Brown Bros. and Harriman & Co.?

A Yes, sir, I have.

Q Do you know what their reputation was in the period from 1963 to 1970?

A Excellent reputation.

Q Do you know if they have any expertise in any particular field?

A They are a commercial bank.

Q And to your knowledge do they have any expertise in any special fields?

A Expertise in commercial banking.

MR. PIEL: If your Honor please, may I respectfully object on the grounds of the scope of the direct.

THE COURT: As I say, I allow these questions, but the witness is the plaintiff's witness in the circumstance.

Q Did Goldman, Sachs during the period from 1968 through the first quarter of 1969 ever work together with Brown Bros. Harriman & Co.?

A What do you mean work together?

Q Participate and syndicate with them, something to that nature.

A They are a commercial bank, they are not allowed

to syndicate and participate in public offerings of corporate securities.

Q To your knowledge did Goldman, Sachs have any business relationship with Brown Bros. during this period?

A I don't know whether we kept an account there or not. I'm not sure.

Q Did you know any of the officers or directors of Brown Bros. and Harriman Co. during this time?

A Yes.

THE COURT: It is Brown Bros. Harriman, there is no "and" in there.

A Yes, I did.

Q Which ones?

THE COURT: I think we are getting far afield now. There is no doubt about the fact; we all know what the episode is that you are referring to, and there is no doubt that Brown Bros. Harriman is a fine organization that reached a certain decision, and if you want Mr. Levy's attestation to their dependability and characteristics, he has given it.

A They are good people, absolutely.

MR. BREINDEL: I was trying, your Honor, to explore the question of access between Goldman, Sachs and Brown Bros. at this point.

THE COURT: Access? All right. I don't understand

what that will be, but go ahead.

A I know --

THE COURT: You mean communications between them?

MR. BREINDEL: Their ability to obtain information from them if they so desired.

THE COURT: If you wanted information from Brown Bros. Harriman about an account, could Goldman, Sachs get in touch with them?

THE WITNESS: Absolutely.

THE COURT: I would think so.

THE WITNESS: Absolutely, your Honor.

Q Mr. Levy, did Goldman, Sachs have a policy whereby it would only represent commercial paper issuers on an exclusive basis?

A We had then and still do.

Q Can you tell me what the reasons behind this policy are?

A Again, I'm not expert in this. You will have to ask Mr. Wilson that. He can give you cards and spades on that.

THE COURT: We have testimony in this record on that from an earlier witness unless you challenge it, Mr. Breindel. It seems to me we have that question answered.

MR. PIEL: If your Honor please, may I ask the

witness please make a little effort to keep his voice up.

THE WITNESS: I'm sorry.

MR. PIEL: We have got some kind of a cement mixer going on outside.

THE COURT: I know.

MR. PIEL: Just project a little bit so we will get it at the back table.

THE WITNESS: Sorry.

Q Mr. Levy, did the Management Committee ever discuss any aspects of the commercial paper department during 1968 through '70?

A I'm sure we did but I don't recall exactly what.

Q Can you recall which aspects you discussed?

A No, I don't.

Q Do you recall discussing incorporation of the commercial paper department?

A We may well have. I don't recall that we did. I think we probably did but I don't recall exactly what, when we had this discussion about selling as agent rather than, you know, selling as order rather than inventory and that kind of thing.

Q As I understand it, you think you probably did discuss some incorporation of the commercial paper department?

A We could have, yes; we discussed incorporation of

the whole firm, as a matter of fact.

Q My question to you is, do you recall discussing separate incorporation of the commercial paper department?

A I think we did.

Q You are familiar with the credit department, Mr. Levy?

A I know what it is, yes, sir.

Q What is the buying department of Goldman, Sachs?

A The buying department of Goldman, Sachs has to do with the longer-term issues of debt and equity offerings that we do publicly or privately. They have to do with private placements and public offerings of debt, of short-term and long-term debt and all of our equity offerings. They do the investigation, the due diligence work and all that stuff that's necessary for putting out a prospectus.

Q And the buying department is a division of the corporate finance department?

A Well, no, it is not, a separate department. Once the corporate finance department brings -- the new business department brings in a client who wants to issue securities, the buying department does all the investigatory work.

Q Now, the credit department is a division of the commercial paper department?

A Correct.

Q Did the credit department during this period of time, 1968 through '70, did the credit department perform any services for the buying department?

A I don't know that they did. They may have, but I don't know that they did or not.

Q Do you recall previously testifying that they did?

A Well, I said they probably did, but I just don't recall any specific instance.

Q Is it your testimony that they probably did?

A Yes.

Q I believe you testified that there was nobody on the Management Committee with experience in credit investigations; is that correct?

A That is correct.

Q And did that testimony encompass Mr. Weinberg?

A John Weinberg?

Q Yes.

A I believe he's in the same category I am and the others.

Q No credit investigation experience?

A That is correct.

Q Can you tell me why if Mr. Weinberg had no credit investigation experience he was subsequently appointed to a Credit Review Committee?

A Well, he's got a lot of good sense and good judgment, and he listened to what the experts told him, and came up with a judgment on it.

MR. PIEL: Your Honor, totally irrelevant. He's now going into a period --

THE COURT: I think we are getting pretty far afield.

MR. PIEL: Very far afield.

THE COURT: I didn't mean Mr. Levy to be used here as a resource for pumping, unless you want to call him as a witness of your own, and it does seem to me with regard to the questions involving the credit department and commercial paper department, and so on, those questions would be better put to those who are directly in it.

MR. BREINDEL: I have no further questions, your Honor.

MR. PIEL: No redirect, your Honor.

THE COURT: Very well.

THE WITNESS: Thank you, your Honor. Thank you very much, sir.

(Witness excused.)

MR. MANEY: Your Honor, defendant calls Robert G. Wilson.

ROBERT G. WILSON, called as a witness by the defendant, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MANEY:

Q Mr. Wilson, are you a general partner of Goldman, Sachs?

A Yes, I am.

Q And since when have you been a general partner?

A January, 1967.

Q During the period 1969 and first quarter of 1970, what were your duties?

A I was the partner in charge of the commercial paper department.

Q Did that have any responsibility in the area of credit decisions?

A Yes, it did.

Q What was that responsibility?

A The credit department reported directly to me.

Q Did you personally have any participation in credit decisions?

A Yes, I did.

Q What was your activity in that regard?

A I had the final authority to take on an account,

where on a decision to stop selling paper or any other credit aspects of any of our issuers, I was the final word in that regard.

Q How did that operate? How did you -- you said you had the final word; how did the word become final to you?

A It became final to me after I had had an opportunity to talk with Jack Vogel and his credit people, and they had done their homework on a particular set of facts that we were working on, and I would ask Jack questions. It could also include my own involvement, direct involvement with a particular issuer.

Q Mr. Wilson, could you give us briefly your educational background?

A Yes. I got my, did my undergraduate work at Haverford College, 1955, graduated from Columbia with my MBA in 1957.

Q Then what did you do in 1957 after graduation?

A I went to work for Goldman, Sachs in the summer of 1957.

Q And you were with Goldman, Sachs continuously thereafter?

A That is correct.

Q Would you briefly give us what duties and titles you had at Goldman, Sachs from 1957 up through 1969?

A I think I will hit all of them. There could be some holes in this. I was hired as a commercial paper salesman in 1957, became New York Sales Manager a few years later, became National Sales Manager shortly after that, still in commercial paper, commercial paper and National Sales Manager. I then went over on the purchasing side of commercial paper, working with the issuers, and purchasing paper to either fill orders or to purchase for inventory in those days, and then I went on to become a general partner and partner in charge of the commercial paper department.

Q Who was your predecessor as partner in charge?

A Well, there were several of them. Harold Wass, Bob Anderson, and Howard Sachs were in the New York office; Jim Hemphill in Chicago, and John Rhoades in New York, all partners.

Q What was your training in the commercial paper department?

A Well, my training, because it was a very small department when I joined it, and having these partners that I have just indicated as people that I reported to, and many of them I reported directly to, I had a lot of first-hand knowledge of working with them all through those years on commercial paper problems within the department.

Q Was there any formal training program in the

commercial paper department?

A Only in the sense when I first started to sell paper I spent considerable time with Bob Anderson going through the rules that I must follow in selling commercial paper. After that it was on-the-job training all through the period.

Q In 1969, early 1970, Mr. Wilson, were you a member of any profession or other association?

A Yes, I was.

Q What was that?

A The Investment Association of New York.

Q Did you have any position of responsibility within that Association?

A Yes. We had a Capital and Money Market Committee which I was Chairman of.

Q What was its function?

A Well, the function of this Committee was to, among other things, write a report every week or every other week which we sent to the Federal Reserve Board and sent to the Treasury Department, indicating our Committee's views on interest rates, capital requirements in both the short and long-term areas, capital markets.

Q Mr. Wilson, you mentioned that you had the ultimate credit decision as part of your responsibility.

Could you explain the process by which you reached a decision on credit during the period 1968, '69, early 1970?

A That is a general question, and there could be exceptions to this. But generally, a corporate finance man would ask either myself or somebody within our credit department, was company A the type of issuer that we felt from the credit point of view would be acceptable to us in the commercial paper department.

That is what I would categorize as a preliminary screening. If the response was, yes, without having any discussions yet with the company or having an opportunity to see the back-up documents that we might want, we would give a general indication based on what was in our library at the time. It could be an annual report or prospectus and so on. If the indication was yes, we would then, through the corporate finance personnel, proceed to have discussions with the financial management, and ask what credit questions we felt were necessary, ask for whatever financial documents we felt were necessary. I would then be relying at this point in time on the credit department, if the situation was a continue, go, and they were interested in issuing, for them to do their own study of the issuer and satisfy themselves that it was a name that we were prepared to go on and it was creditworthy.

At that point in time, if I still had not gotten any yellow lights or red lights to stop the discussions and negotiations, why, the company would pick a time to get started, and we would, I would have a review with Jack, and ask whatever questions I had at that time, and if he satisfied those, we would reach a conclusion to go ahead and start to buy paper.

Q Jack Vogel?

A Yes, Jack Vogel.

Q What, to your knowledge, was Mr. Vogel doing in this process you have just described?

A Well, there were several assistants or associates of Jack that worked in the commercial paper department, and we had a variety of procedures, one of which was to work up a list of what we call we needs. This would be specific information that we would need from the issuer prior to getting started and this would include authorization from their Board of Directors to issue paper, signature cards, if they had a revolving credit agreement, a copy of the revolving credit agreement; specific credit data to permit us to put out our yellow information sheet, things like that.

There were also the analyses going on in the credit department which I know would include relying on such press releases that would appear in the paper, the Times, or

the Wall Street Journal, the rating agency manuals, any prospectuses, annual reports, proxy statements, things like this were in our library. This was the type of data that they would pull together and analyze within the credit department.

Q Did you as a general matter have an understanding of what would be the use of the proceeds of the sales of commercial paper being contemplated?

A Yes, as a general matter, yes.

Q What was your practice in that respect?

A We had to make sure that the proceeds of the paper in commercial paper were used for current transactions under the Section 3(A)(3) exemption of the 1933 Act. If there were any questions that we felt an issuer did not have a clear, current need or a current transaction, we would consult with our counsel, Sullivan & Cromwell, and through them with the SEC to determine that an issuer would qualify for that exemption. If they didn't, we couldn't handle the paper.

Q How did you go about determining whether the proceeds were to be used for current transactions?

A Well, you would ask the issuer what the intent of the short-term borrowing was to be used for, and the classic example in the commercial paper market is the seasonal borrower, the department store or the meat packing or the grain company that would have a very short seasonal need, have zero borrowing when the season started, peak at some point and then pay it off from its inventory.

Q Did you handle commercial paper of issuers which

were not seasonal, service organizations and the like?

A Service organizations?

Q Did you handle public utility commercial paper?

A Yes, we did.

Q How did you handle needs in a public utility?

A There is an example of an instance where we felt there was some question in our minds whether utilities, gas and electric utilities, could issue commercial paper within the 3(A)(3) exemption. We worked with Sullivan & Cromwell and devised a formula, presented it to the SEC, seeking a no-action from the SEC if utilities could issue commercial paper under that formula.

That approach and that formula, that no-action letter was granted, I believe, in thelatter part of 1963 which permitted gas and electric utilities to begin issuing commercial paper.

THE COURT: I think we might as well break now for lunch.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

R O B E R T G . W I L S O N , resumed.

THE COURT: Before we start, I want to tell you that I thought I would have to go to a meeting tomorrow afternoon at 3 o'clock. That has been shifted to today at 4 o'clock. So we will quite today at 4 o'clock but I will be able to continue tomorrow as long as we need to continue to get things done.

MR. BREINDEL: We are confident, your Honor, we will finish before the luncheon break tomorrow.

THE COURT: Very good.

DIRECT EXAMINATION CONTINUED

BY MR. MANEY:

Q At the luncheon recess, Mr. Wilson, you were talking about no-action letters with respect to utility issuers of commercial paper. Do you remember that?

A Yes.

Q What was the basis upon which the no-action letter was given?

THE COURT: Isn't there a copy of it in the files?

MR. MANEY: Mr. Wilson can answer quickly.

A Yes, it was based on the fact that if the utility sold a dollar amount of commercial paper no greater than the

dollar amount of its inventories and receivables, the SEC would not take action under Section 3(A)(3).

Q This was a formula under the current transaction test?

A Correct.

Q Did you make any inquiry as to the use of proceeds of the commercial paper to be offered by Penn Central?

A I don't believe I did, no.

Q Do you know why not?

A To me it was obvious why they were borrowing the funds in the commercial paper market and, too, there was no requirement, legal requirement, that the proceeds that were borrowed for the use of Penn Central Transportation be used for current purposes.

Q What was your understanding as to the legal requirement with respect to Penn Central?

A My understanding, based on clearing this with Sullivan & Cromwell before we took them on, was this issuance of paper was exempt under 3(A)(3), which is a carrier subject to the ICC is exempt.

Q Do you recall, Mr. Wilson, in 1968, 1969, and the first quarter of 1970, any other issuers of commercial paper, as that term was known in the banking community, which did not require that the proceeds be used for current

transactions in order to be exempt?

A Yes.

THE COURT: What period are you asking about?

MR. MANEY: '68, '69, early 1970.

A Yes, if you are using the term "commercial paper" in its broader sense, the letter of credit from commercial banks were exempt under 3(A)(?).

Q Would you explain what you mean by the letter of credit?

A The letter of credit is a document that is attached to a third-party note whereby it is the equivalent of a guarantee of the bank if the underlying note is not paid the bank will see that the note is paid.

THE COURT: I am not quite clear what you are trying to develop here, Mr. Maney. You gave the example of a utility, let's say Con Ed, which was held by the SEC to be -- well, it was granted a no-action letter if and under the condition that the commercial paper be no greater in amount than its inventory and receivables; is that right?

Then you went on to talk about Penn Central, which is a carrier, and Mr. Wilson said that he had been advised by your firm that it was exempt from what? I am not quite clear, because there are various things you can be exempt from under 3(A)(6) as a carrier.

Are you trying to bring out various possibilities of exemption or are you implying that the utility exemption was available to Penn Central as well as the carrier exemption or what?

MR. MANN: First, in view of the testimony by Mr. LeLay, I believe, I am trying to establish that the generic concept of commercial paper included securities which were exempt from the registration requirements of Section 5 of the Securities Act which did not necessarily come under Section 3(A)(3) of that act to qualify for exemption, and, therefore, one could not assume that instrument being offered under the generic name "commercial paper" necessarily had met a current transaction test.

There is a second point, which is that under the interpretation by the SEC and those in this industry where they recognize the impossibility of tracing particular dollars, that even had the test applied in the case of Penn Central, Penn Central would have met that test.

THE COURT: That is another matter. Is the position of the plaintiff by its counsel -- I mean the defendant by its counsel -- that in fact Penn Central was not necessarily subject to the 3(A)(3) test but only to the 3(A)(6) test, which, if I understand Mr. Wilson's testimony correctly, didn't necessarily require the use of funds for

current operations in the case of a carrier? Is it your position --

MR. MANEY: Perhaps I could hopefully clarify this issue quickly. It is from the standpoint of a requirement that a security be registered. I don't even understand the plaintiff to challenge --

THE COURT: Neither do I.

MR. MANEY: -- that it was exempt from registration under 3(A)(6). The only point of going into this area of current transactions is because of Judge Friendly's opinion in the Keller case that equated the 3(A)(3) test under the '33 Act to determine a security under the '34 Act, and it is purely that issue as to which the whole question of current transactions comes up. Also to the extent that the testimony of a representative of the Union Bank seems to suggest that there was some kind of material omission in not divulging that this paper was exempt under a different provision. I don't know that that is seriously pressed but it was raised in testimony.

THE COURT: Thank you.

Q Mr. Wilson, why was it obvious to you as to what the proceeds of the Penn Central commercial paper were going to be used for?

A These two railroads, being the New York Central

and the Pennsylvania Railroad, were the subject of considerable review by the ICC and then challenges that went to the Supreme Court prior to the merger and then agreeing that the merger take place, and I knew from that background plus during the period of time that we handled the commercial paper of the combined railroads that the railroad operations themselves had been operating in the red, and one of the reasons behind putting the two railroads together was to create some economies and efficiences that the railroad operations could be turned around over a period of three to five, eight years, and be in the black. So I viewed the use of commercial paper or short-term borrowing from either the banks or ourselves in the paper market, that this was to be used for working capital purposes during that period of time while they made these efficiencies.

Q Do you know, Mr. Wilson, whether Penn Central commercial paper exceeded the amount of its accounts receivable at any time?

A To my knowledge, at no time did the commercial paper peak, which was $200 million, exceed the dollar amount of receivables on any balance sheet that I saw for the Penn Central Companies, the railroad itself, not all the railroads, the Penn Central Company.

THE COURT: The Penn Central which? The

transportation company?

THE WITNESS: Yes, the transportation company in the later part of '69.

MR. BREINDEL: I think it is unclear, your Honor. I think Penn Central Transportation Company as of October, 1969.

THE COURT: That is why I am asking the question. I am asking Mr. Wilson not so much as to name as what company he is talking about.

THE WITNESS: I am talking about the railroad and its receivables. The receivables were between 220 million and $240 million.

Q Mr. Wilson, what is your definition of the word "creditworthy?"

A Creditworthy as we use it at Goldman, Sachs and in the commercial paper department at Goldman, Sachs is the capacity of an issuer to meet its short-term obligations, meaning commercial paper maturity, bank debt, other short-term debt that would become due, meet it on time, the analysis that would go into it to make us satisfied that there was cash or the equivalent available to pay those notes on time.

Q Who made the decision that Goldman, Sachs would act as dealer for Penn Central paper?

A I did.

Q When?

A I can't tell you the exact date, but approximately it was a day or so, a few days before the first purchase which was, I believe, August 1, 1968. So the latter part of July, 1968.

Q How long had that been under consideration by you?

A A considerable period of time. I can't place in time the first request that Goldman, Sachs consider handling the paper, but I believe it was even prior to the merger date. I believe it was even in the fall of 1967 to give consideration to this.

THE COURT: So it was a matter of some months?

THE WITNESS: Yes, four, five or six months.

Q Did you know any of the officers of either the New York Central or the Pennsylvania Railroad?

A Yes, I did.

Q Was Goldman, Sachs a dealer for the commercial paper of the New York Central?

A Yes.

Q Did you get to know the financial officers of the New York Central in that connection?

A Yes, Walter Grant and Ray McKron.

THE COURT: Are those the officers you knew or did

you know some of the Pennsylvania people, too?

THE WITNESS: I also knew Dave Bevan, Bill Gerstnecker, Jo[illegible] Schaeffer, I believe, also of the Pennsylvania Railroad p[illegible]ior to the time they were merged.

Q Had you handled the commercial paper of any other railroad?

A Yes.

Q Which one or ones?

A The one that I was involved in was the Chessie Corporation, which was wholly-owned by the C&O Railroad.

THE COURT: Were you handling it at the same time?

THE WITNESS: I believe that we got that going in 1963, '4 or '5 and they were in the market for a couple of years or so, and I do not think they overlapped with the taking on of the New York Central and then taking on of the Penn Central Company. I do not think they overlapped.

Q With whom did you discuss the possibility of Penn Central issuing commercial paper?

A I think the first time that I got involved with discussions about the Penn Central issuing paper was with Dave Bevan in I think it was March, 1968.

Q Did you know Mr. Bevan's reputation at that time?

A Yes.

Q What was your understanding of his reputation in

the financial community?

A It was an outstanding one. He was a highly thought of man.

Q Mr. Wilson, during 1968, 1969 and 1970, what was your practice with respect to reading the financial press?

A My practice then, as it is now, is to try and read the New York Times and the Wall Street Journal every day. There are some days when I am either on vacation or away that I am not able to do that, but I try to do it every day.

Q Was there also a clipping service within Goldman, Sachs during that period?

A Yes. When I was away on a vacation or out of the office and I didn't read articles pertaining to our issuers, I could catch up with it through this clipping service, clippings out of the New York Times and the Wall Street Journal, that were assembled for us and routed to senior executives in the firm. So I would catch up on it when I came back.

Q During 1968, 1969 and the first quarter of 1970, were you generally aware of the results of operations of the Penn Central, by whatever name known Penn Central Company or Penn Central Transportation?

A Yes, I was.

Q Were you aware of the quarterly financial results?

A I can't tell you that I can remember each article that appeared in the Wall Street Journal or the New York Times, but, yes, I was aware of the trends going on, the quarterly trends going on.

Q Did you say that you did conclude the Penn Central was creditworthy in 1968?

A Yes.

Q Did you thereafter continue to hold the belief the Penn Central was creditworthy at least through March, 1970?

A Yes.

Q In light of the results of operations of the railroad as reflected in the financial press, did you nevertheless consider the Penn Central was creditworthy?

A Yes.

Q Can you explain why you held that view? Let's focus in early March, 1970.

A In early March, 1970, I knew about the 1969 year-end results, I knew about the $66 million loss in the railroad operations and the consolidated profit of $4 million, I believe the number is, for the whole year 1969. To me the losses in the railroad operations were still well within the capacity of the railroad management through the family of companies, some 160-odd companies that made up

this Penn Central complex, well within that to cover the red ink that was appearing in the railroad operations, and I thought there were going to be more economies by this time but even though there weren't it did not disturb me or make me believe it was not creditworthy.

Q Mr. Wilson, I show you a document marked Exhibit A-217, part of Exhibit A in evidence. Is that a file copy of a letter that you authored?

A Yes, it is.

Q On what basis did you arrive at the conclusions that appear in this letter?

THE COURT: Would you specify what conclusions you refer to?

Q Principally with respect to the capacity to market an additional $50 million of paper.

A I can't tell you with whom I spoke in putting this letter together, but this was a request of me as to my judgment as to whether the commercial paper market would absorb an additional $50 million of the Penn Central paper, and my conclusion was yes, it would.

Q Did you discuss with anyone the creditworthiness of Penn Central with respect to $150 million of commercial paper outstanding?

A I can't tell you with any certainty that I talked

with Jack Vogel or anyone else in the credit department. Whether I did or not, the number asked here going from 100 million to 150 million was so far in excess of the leeway that I saw within this family of companies that in terms of assets to back up this paper, that I very easily might not have asked Mr. Vogel.

Q Did you mean to say excess or in significant relation to?

A What I am talking about is the increase, the increase from 100 million to 150 million. The 50 million increase was so small in relation to the total assets available within this complex that I wasn't concerned about it from a creditworthy point of view. In other words, they could have sold even greater than the $150 million if they had asked from a creditworthy point of view.

Q Would it have been the normal practice to talk to somebody before sending a letter of this type?

A Yes.

Q With whom would you have spoken?

A Depending on who was around at the time, I probably would have talked with George Van Cleave, Jack Vogel, with John Rhoades, if he was around.

Q The ICC did approve the application to increase the outstanding from 100 to 150 million?

A Correct. Yes, they did.

Q Subsequently, did Penn Central Company change its name to Penn Central Transportation Company?

A Yes, it did.

Q And at that time created a holding company?

A Yes.

Q Did you have any understanding as to the purpose of creating a holding company?

A Yes, I did.

Q What was your understanding at the time?

A My understanding was that the purpose of setting up the holding company was to create a vehicle whereby the Penn Central management could acquire other companies through an acquisition program of some kind, and they were going to use the stock of the new holding company to make acquisitions.

THE COURT: Like the banks have done here in New York?

THE WITNESS: Exactly.

Q Mr. Wilson, I hand you a group of blue sheets to facilitate reference as we go along.

I ask you first to turn to the blue sheet dated September 19, 1969, Exhibit PX-20. Have you read over that blue sheet in preparation for today's testimony?

A Yes, I have.

Q Do you have any independent recollection of what was discussed at that meeting other than is reflected in that blue sheet?

A No, sir. It is very hard for me to distinguish between some recollection I have of the discussions in these blue sheets and this particular blue sheet, because I have read this over so many times.

Q Do you remember anything else being discussed not reflected in the blue sheet?

A No, sir.

Q There is a reference in that document to an application to increase the amount of paper outstanding. Was that application filed?

A Yes.

Q Was it granted?

A Yes.

THE COURT: Filed with whom?

THE WITNESS: The ICC.

Q Did you have a judgment at that time as to the ability of Goldman, Sachs to market $200 million of Penn Central paper?

A Yes, I did.

Q What was your judgment?

A That we could handle the job and the market would absorb the increase.

Q Did you have any opinion at the time as to the capacity from a credit standpoint of Penn Central to sell $200 million of commercial paper?

A Yes.

Q What was that judgment?

A That the Penn Central was creditworthy, that there were sufficient assets within this family of companies, and I am primarily thinking of the Pennsylvania Company, which held so many of the non-railroad assets that were available either through a sale of some of those securities to generate cash or through being able to be pledged at banks or that the banks thought they were available even to give lines of credit without them being pledged, that the railroad could generate any needed cash to cover their commercial paper. So my answer is categorically yes, I felt that the railroad was creditworthy at this time.

MR. BREINDEL: May we have some clarification as to whether the Pennsylvania Company means the railroad or the holding company?

THE COURT: What do you refer to when you use that name?

THE WITNESS: I referred to the wholly-owned

subsidiary of the railroad that owned the Great Southwest stock, the Arvida stock, etc.

Q Mr. Wilson, there is a reference in the last sentence of that blue sheet that O'Herron "asked if we could put out as much paper as possible in April or longer."

What does that mean to you?

A This was a request by John O'Herron that we sell here in September and October of 1969 commercial paper with maturities out into April or longer, but obviously no longer than 270 days, because that is a restriction under the '33 Act that we couldn't sell longer than 270 days.

Q Was that your understanding at the time?

A Yes, indeed.

Q Did you have an understanding as to why Mr. O'Herron made that request?

A Yes.

Q Why?

MR. ATLAS: Objection, your Honor.

THE COURT: What was the basis of your understanding?

THE WITNESS: It is in the same sentence.

THE COURT: Which sentence are you referring to?

THE WITNESS: The last sentence of the blue sheet dated September 19, 1969: "John also pointed out that the

company will be in a very tight cash position in the first quarter of 1970."

That was the reason.

THE COURT: That was the reason for what?

THE WITNESS: That he asked that we have the maturities of the commercial paper that were being sold at this time as long as possible, "Don't have them coming due in January, February and March if you can help it because our cash balances are apt to be at a lower point at that period of time."

Q Did Mr. O'Herron's reference to tight cash in the first quarter have any significance from the standpoint of credit in your mind?

A No, it did not.

Q Why not?

A For several reasons. One, I had known from the discussions I had had with the managements of the two predecessor railroads that the first quarter of a calendar year for both railroads were the ones where their earnings were the lowest of the four quarters of a year and was a time when, from a cash point of view, with the Penn Central Company, that the non-railroad earnings were less than other quarters during this first quarter. So telling me that he was going to be in a tight position was really confirming

or telling me something I knew historically with the two predecessor railroads and with this railroad; and the last point I would make on this is the fact that it was tight cash certainly never meant to me that they were running out of cash to the point that it couldn't be replenished. It just means that their cash balances were down.

Q Mr. Wilson, will you turn to the next blue sheet, dated October 3, 1969. Did you receive a copy of this blue sheet at or about the date it bears?

A Yes, I did.

Q Do you know who Patrick Bowditch was at the time?

A Yes.

Q Who was Mr. Bowditch?

A He was a senior lending officer for First National City Bank in their transportation division.

Q Did the blue sheet of October 3, marked A-84, have any credit significance to you?

A It was of some comfort to me, and a very generous offer on the part of Penn Central's lead bank to raise the revolving credit that they had to the railroad, and it sounded to me like they were, having looked at all the railroad's figures and so on, were prepared to increase this revolving credit and they were asking our view on were we having trouble to sell the paper, and other than that, I don't think there was any credit significance to this. It was reconfirming our own judgment and I was pleased to see it.

Q The next page there is a blue sheet dated October 22, 1969, marked PX-33. Do you have that, sir?

A Yes, I do.

Q Do you recall the conversation with Mr. O'Herron

on that date?

A No, I can't recall it other than from the blue sheet it is indicated that I had this discussion and I wrote this blue sheet. I cannot remember the conversation.

Q Do you recall reading a newspaper report of the third quarter results?

A I'm sure I did. I can't tell you exactly when, but I feel certain that I did, yes.

Q Did Penn Central show a fourth quarter in the black, as it turned out?

A No, they did not.

Q Would you look at the blue sheet of November 10, PX-28. Do you recall that conversation?

A Yes, I do.

Q Do you know who Mr. Cox was at that time?

A He was their outside counsel.

THE COURT: Whose outside counsel, Penn Central?

THE WITNESS: Penn Central's outside counsel.

Q Did you know the circumstances under which the statement attributed to Mr. Cox had been made?

A Yes.

Q What were those circumstances?

A Mr. Cox was testifying at hearings before the ICC. The hearings had to do with the proposed merger between the

Baltimore & Ohio Railroad and the C&O Railroad. And Penn Central, through its counsel, Mr. Cox, was taking the position that the Penn Central merger would be hurt by this, if these two strong regional railroads got together and became a larger, more competative railroad with them, it would hurt the merger. That was their position. That was Penn Central's position.

Q Did you believe that the publicity about Penn Central was affecting the marketability of their paper at that time?

A Yes.

Q Did you have any view as to whether the adverse publicity about Penn Central would affect the creditworthiness of the company?

A No. If we are referring now to this particular --

Q I am referring to the blue sheet of November 10, PX-28.

A No.

Q You did advise Mr. O'Herron to get additional lines, didn't you?

A At this time?

Q Yes.

A Yes.

Q Why did you advise him to do so?

A During this period, September, and it really started back in the summer through the end of 1969 and into 1970, was one of the tighest money market periods I had ever seen in my career. The interest rates were rising. There was pressure from the Federal Reserve on the commercial banks to keep the prime rate lower, and there was an allocation of credit going on within our system, and I think that there were a number of accounts that were buying paper, were becoming nervous during this period of time. Particularly as you get into November and December. And I thought that the way to offset some of that nervousness by certain of these investors was to get more bank lines, because this was a criterion that some of these investors had in buying paper, and rather than lose accounts that were buying Penn Central I wanted to make sure we held on to all the ones that we had and maybe even add some more to it. So that was my reasoning behind recommending to them that they get more bank lines.

Q You say some of the investors had lines as a criterion. Did you understand why they had that criterion?

A Yes.

Q Why?

A My understanding of these investors that were using these shortcut tests, if you will, and they can include

such things as working capital ratios or debt to equity ratios or whether the stock was traded on the New York Stock Exchange or bank line coverage or whether the name was NCO prime -- these were credit shortcuts, usually by non-bank investors, corporations that didn't have the staff to do their own analytical work and so they were relying on these outside standards to buy their paper and very often these were set up by the Board of the Finance Committee or whatever, and whoever was responsible actually placing the order had to stick within these artibrary guidelines.

Q How would -- say for those investors who had bank line coverage as one of their criterion, how would they know what an issuer's bank lines were?

A They would have to ask the Goldman, Sachs salesman either at the time of sale or in setting up the account and the approved list would get that from the salesman in advance of sale.

Q The normal course of their activities, were the salesmen aware of these criteria?

A He wouldn't be current on the changes in the bank lines for each of the issuers, no, he wouldn't be current on this. He would have to ask somebody inside the commercial paper department.

Q No, I am asking, were your salesmen aware of the

investors' criteria?

A Oh, excuse me, I did not understand the question.

Yes, they were aware of them. They'd know it from either having originated the account or from the knowledge that they would have in handling the account, they'd know what that investor's criteria were.

Q Was this a criterion that was not, that was fairly common at the time, percentage of bank line coverage?

MR. ATLAS: Objection, your Honor. Common to whom?

Q Common to those investors purchasing from Goldman, Sachs?

MR. ATLAS: Objection, your Honor. I think at this point we have been rather liberal in allowing Mr. Wilson to testify as to this undefined class of investors and I'm not sure I understand what is meant by the term "common" or --

THE COURT: Mr. Maney is asking now about the investors through Goldman, Sachs and it would seem to me that certainly Mr. Wilson ought to know what is common there. By common, I would suppose it would mean the normal standard of behavior or at least you could say if not that, it was relatively frequent, and if so, what the degree of frequency was.

A It is a very hard question to answer where there's

1500 accounts that we sold to.

THE COURT: Right.

A I would say if anything, there was a group of the larger investors that could buy in large amounts, 5 million, $10 million purchases, that bank line coverage was pretty much of a requirement, and if it wasn't, it was becoming more so during this tight money period of November and December.

THE COURT: You earlier said, if I understood you correctly, that those who wanted bank line coverage or those who didn't bother, if that is the phrase to use, to do their own analytical work, are those also the ones you are talking about as group of larger investors?

THE WITNESS: Yes. The group I'm talking about is the corporation now.

THE COURT: Was there any greater degree of demand for bank line coverage in the case of Penn Central than in other of your large accounts?

THE WITNESS: No, I don't believe so. No.

Q Did you offer commercial paper of issuers besides Penn Central during this period which did not have 100 percent line coverage?

A Yes, some of the AT&T subsidiaries would fit into that category.

Q Mr. Wilson, would you turn to your blue sheet of February 5, 1970, marked PX-11. There is a reference there to speaking with GLL; is that Mr. Levy?

A Yes.

Q And JCH this morning, that is Mr. Hemphill?

A Yes.

Q Would you explain the circumstances of your conversations with those two gentlemen?

THE COURT: What date are we now?

MR. MANEY: February 5, your Honor, PX-11.

THE COURT: Okay.

A Late in the afternoon of February 4, and by late I mean I think it was after 5 o'clock, it could have been in the 5:30 area, there came across the broad tape some news regarding Penn Central Transportation, and the news was garbled and unintelligible.

THE COURT: You mean by that it was literally unintelligible. You don't mean you could read it and couldn't understand what it meant?

THE WITNESS: I couldn't understand what it meant, and as I remember, there were even some gaps in the sentences, and it wasn't clear to me -- there were two aspects of it that I remember; one was the consolidated loss for the year, and then it had $125 million writeoff of

certain assets of the transportation company. It wasn't clear to me whether that was going to be an income statement charge and, therefore, the four million consolidated dollar loss was after that charge on the income statement or whether the charge was a charge directly to the capital, the net worth of the railroad, and it wasn't clear from this release that came out. But I had some of the figures but I didn't know how to put them in place. So at that point, and there was no way that I could find out late that afternoon, I checked with Gus Levy's office, I didn't know whether he was there or not, I found out he had gone to St. Louis. I found out his phone number and I called him that evening.

The reason that I was trying to reach Mr. Levy was that this was an account that he was the senior person in following at Goldman, Sachs. I knew that he knew Dave Bevan and had brought Dave Bevan in to lunch in that March, 1968 period when I was first introduced to the proposition of would we handle their commercial paper, so as the senior partner in the firm and one that knew the senior people at Penn Central, I thought I would alert him to this information, even though I couldn't tell him exactly what the impact of it was.

Q Did you say, Mr. Wilson, $4 million?

A $4 million consolidated profit. Maybe I misspoke.

Q Then you spoke to O'Herron after this or --

A Well, if we're still talking the evening of the 4th, no, I do not believe I reached Mr. O'Herron that night. I think it was too late.

The next morning I called Jim Hemphill and talked with him. By that time the news was in the papers, that morning, and I had read that prior to talking to Mr. Hemphill, and I called Mr. Hemphill for the reason that he was one of the senior partners at Goldman, Sachs that had devoted his whole career to commercial paper, and he was kind of a sounding board for me, and I thought I would alert him to my discussion with Gus Levy the night before. I can't tell you the time of that phone call, whether I decided to call O'Herron and what I was going to tell him or I called him after -- if I called O'Herron after speaking with Jim Hemphill, but the purpose of speaking to these two gentlemen, Mr. Levy and Mr. Hemphill, was as I have just stated.

Q You did speak to Mr. O'Herron on the 5th?

A This blue sheet indicates that I did, yes.

Q Did he explain the wroteoff to your satisfaction, or at least to your understanding?

A I'm not sure whether it was this phone call or the next day at lunch that he explained it to me.

MR. ATLAS: Objection, your Honor. I think the witness should be asked to testify first as to his recollection, and if he can't recall, he should be allowed to refer to the blue sheet, not to testify directly from the blue sheet.

THE COURT: I didn't know he was being asked to testify from the blue sheet.

MR. ATLAS: He is.

THE COURT: Tell us what you remember first. If you can't remember, then you are free to look at the memorandum to see if it refreshes your recollection.

A I can't remember whether John O'Herron told me the reasons why the fourth quarter results were in the red or not as of February 5.

Q Did you have any discussion about the cash picture for the first six months on February 5?

A If I understand the question, I was inquiring as to what their financing needs were for the year 1970, and we got into quite a discussion as to what their amounts were that they were going to need and how they were going to finance it, yes.

Q Do you recall anything about a tight cash situation in the first six months?

MR. ATLAS: Objection, your Honor. He's leading

the witness.

MR. MANEY: I'm trying to refresh his recollection. Mr. Atlas won't let me show him the blue sheet.

THE COURT: Overruled. Okay. He didn't say you couldn't show it to him. He just asked him to testify to what he remembers in the first instance. You can call his attention to it. There is something more satisfying about direct recollection than looking at a memorandum and reading it to us, which we can all do.

A I think he did, yes. I think he did, yes.

Q Did that statement have any significance from the standpoint of credit, to your mind?

A If his comment to me was that they were in a tight cash position, if that comment was made on February 5 to me, it would have meant to me what I expected he had told me back in September, that they were going to be in a tight cash position in the first quarter, so that news wouldn't have come as any surprise to me.

Q Mr. Wilson, would you look at your blue sheet of February 5. I call your attention to about the middle of the first paragraph. "I asked what their cash picture looked like for the first six months of this year. He said it is very tight."

Do you recall that statement being made to you by

Mr. O'Herron?

A I do not recall that specific statement but this blue sheet refreshes my recollection that I inked it in the blue sheet so I assume it was said to me.

Q Do you recall whether that statement had any significance to you from the standpoint of credit?

A No, it had no credit significance to me whatsoever.

Q Do you have any recollection of discussing tap issue sales with Mr. O'Herron on February 5?

A Yes.

Q What did you say to him in that respect?

A I believe it was at this, during this phone call that I put Mr. O'Herron on notice that we were going to work on tap issue sales, and I can't remember whether it was this discussion or the next day that we were going to have some kind of a target or a ceiling on their inventory, that we were going to carry.

Q Why were you making that statement to Mr. O'Herron?

A For several reasons. One is, I had been trying for some months to get him to get some more lines of credit. Two, I was trying to get him to transfer some of these 50 million of backup lines to swing lines, and I was not very successful over that period of time in having him take these two actions which would have helped Goldman, Sachs

carry less inventories of Penn Central, which I had found had been costing us a great deal to carry, and was not, in my opinion, a very efficient way to be handling this account because of these large Penn Central inventories.

So I was negotiating with John on this, and I was using these year-end results. They were less favorable than what I had thought they were going to be, and I was using this as a wedge, if you will, to negotiate with them, to get tough with them.

Q You said they were less favorable than you thought they would be. Then Mr. O'Herron predicted a fourth quarter in the black?

A Yes, he had.

Q And that didn't come about?

A No, it did not.

Q Did that cause you any reason to question Mr. O'Herron's credibility?

A No. After I learned what the reasons were, why the fourth quarter was in the red, and had not worked out as he anticipated, they were very reasonable reasons. I understood them.

THE COURT: What were they?

THE WITNESS: The accountants had made them take a special charge in the fourth quarter on certain snow

removal equipment, I believe.

THE COURT: Write down, you mean, or off?

THE WITNESS: They'd write down or off. An awful lot of this equipment was self-insured by the railroad, and either because of damage or usage or what-not, I think it was a $6 million charge -- it is in one of these blue sheets here, the amount of it; and secondly, the fourth quarter, particularly in December, the severe snow storms in the northeastern part of the United States had resulted in less profits than they had anticipated.

Q I think you mentioned a ceiling or guideline on inventory. Had you prior to February 5 imposed any ceiling or guideline on inventory of a specific issuer?

A Yes, we had.

Q Do you recall the circumstances under which you had done so?

A Yes.

Q What were they?

A I believe it was in the fall of 1969, during this tight money market period I was talking about when the commercial paper department was operating with a total ceiling of inventory, and we were constantly running up against that ceiling and had to ask the Management Committee to get increases in that ceiling to conduct our affairs

every day. And it was during that period we made up a list of a number of finance companies and there could have been even some non-finance companies on the list, it is just not clear in my mind, where we felt that those issuers were particular inventory offenders, if you will. They had stayed in inventory too long and they weren't selling because of the fixed maturities in inventory, and that we'd set an internal guideline or ceiling on those names with the understanding that if the ceiling was $5 million and we had 10 million maturing on a day and we only sold eight of it, the company would have to pay off the remaining 2 million, we wouldn't go from 5 million to $7 million.

Q Mr. Wilson, February 5, didn't Mr. O'Herron agree to repurchase $10 million paper from your inventory?

A Without looking at the blue sheet, and in my mind the overlapping between this phone conversation and the luncheon the next day, I can't tell you whether we resolved that or talked about that on the 5th or the 6th. I think it was the 5th.

Q One of those two days, that decision was made, right?

A We had a discussion about it. I believe it was agreed to or agreed to shortly after the luncheon on the 6th. It is not clear the exact day in my mind, without going back

and reading this.

Q Had you, during this period, or let's say in 1969 into 1970, up to February 5, had you at any time sold paper from your inventory back to an issuer? What is the phrase used for selling from Goldman, Sachs back to the issuer?

A Where we returned it to the company?

Q Returned to the company, is that it?

A Right.

Q Had you ever done so before, in order to reduce your inventory?

A Yes.

Q On more than one occasion?

A Yes.

Q Do you recall the names of any of those issuers?

A Yes.

Q What were they?

A Two names that come to mind are the Dow Chemical Company and the Avco, A-v-c-o, Company, that would be the parent company, where in December '69 we returned a pretty big block, $10 million, I believe.

THE COURT: September '69?

THE WITNESS: December, December 15, tax day.

THE COURT: How much was it?

THE WITNESS: I believe it was $10 million.

THE COURT: To which one of the companies?

THE WITNESS: I believe that was the Avco Corporation. And the second one would have been the Dow Chemical, which was in I believe around February 17 of '70, and I think that was in the magnitude of 10 million or more millions of dollars.

Q Mr. Wilson --

THE COURT: May I ask one question. Was this a phenomenon relatively restricted to tight money times?

THE WITNESS: Yes, because we were up against this ceiling, this $25 million ceiling, and in preparation for this trial I went over some documents to focus in on this point, and December 15 is a period where I think our inventory was around $240 million and on the 14th and the 15th, even with selling paper back to some of our issuers, some of the big blocks we had in inventory, we went up to 300 million or 340 million, so it would be very much a maneuver, a technique that George Van Cleave and his people would do to position ourselves to take care of heavy maturities on a tax date which means we have a lot of maturities coming due and very few corporations anywhere with money to buy, so we had more maturities than we had sales, and we tried to make room in our inventory to accommodate the unsold maturities on that date. And it

wasn't just restricted to tax dates. We all through this period had many days where we were over our $250 million ceiling, and were working in this regard to make sure that we could stay as close to the ceiling as possible without going and ask the Management Committee for an increase.

Q You said you reviewed the documents in preparation for this trial. Had you reviewed those documents prior to your deposition?

A No, sir.

Q Mr. Wilson, I show you these documents.

MR. MANEY: Your Honor, while we did not expect this would be an issue in this trial, these were documents produced to counsel in 1971. We would ask them to be added to the pretrial order as an exhibit. They will be marked FK, FL, FM and FN for purposes of identification. FK is a handwritten ledger sheet showing returns to company, pre-payments and buy-backs of Avco Corporation commercial paper; FL is the same handwritten ledger sheet for Dow Chemical Company, and for purposes of comparison, FM is the same ledger sheet for Penn Central. FN is a computer print-out showing commercial paper inventory for six selected issuers selected by plaintiff's counsel. When I say plaintiff's counsel, I don't mean Mr. Breindel. I mean liaison counsel in the consolidated discovery.

THE COURT: A printout of what?

MR. MANEY: Inventory of commercial paper of six issuers of commercial paper through Goldman, Sachs selected by liaison counsel for plaintiffs.

MR. BREINDEL: I have a preliminary objection that

these were not designated. I don't at this point object to these, but I think we should have the opportunity to look at them overnight. We have never seen them before.

THE COURT: I agree with you.

MR. MANEY: I take issue with the fact he has never seen them before. It was given to his agent four years ago.

MR. BREINDEL: We have been given 2000 or so documents.

THE COURT: Let me suggest this. Let's take a short recess if Mr. Wilson finishes on direct before we conclude today and you look at it and see whether you need to study it at length or you do not. If you do, you will have a chance to do it.

MR. BREINDEL: Thank you.

BY MR. MANEY:

Q Mr. Wilson, I show you Exhibits FK, FL, FM and FN for identification. Are these the documents that you said you reviewed prior to this trial?

A Yes.

MR. BREINDEL: Excuse me, your Honor. Maybe I am confused. My understanding was Mr. Wilson would not be questioned about these documents until we had an opportunity to review them.

THE COURT: I didn't mean that. I meant you would have an opportunity to review them before you conduct your cross examination. What would you want to review them for before his being examined about them?

MR. BREINDEL: To see what's in them. There may be something objectionable. I don't think we should be required to review these documents after Mr. Wilson testifies about them.

THE COURT: I will not actually look at them until after you have examined them, in any event.

MR. BREINDEL: I still object to his being presented with and testifying about documents we have not had a chance to review. Upon reviewing them we may have no objection whatsoever.

THE COURT: Do you have another line of testimony you can go into?

MR. MAHEY: Yes.

Q Mr. Wilson, you said you had not been very successful with Mr. O'Herron and were using this opportunity. Couldn't you just tell Mr. O'Herron that you wanted him to get swing lines and increased bank lines?

A I could have, yes.

Q Why didn't you do so?

A Well, this is a question of judgment on my part.

To me it wasn't an absolute requirement. I thought there was going to be a runoff in paper. I was suggesting some actions to be taken to stem any runoff in paper. If he didn't want to follow my advice, he didn't have to, and I didn't want to certainly irritate him or give him an ultimatum on this point for fear that he could say, "Well, that's very fine, Goldman, Sachs, but we are going to go to a competitor that isn't going to be as demanding on this point."

Q Had you during that period lost any accounts to other dealers?

A Yes, for a variety of reasons.

Q Do you have any recollection as to whether there was a substantial time delay betwen your seeking to be the dealer and someone else becoming the dealer?

THE COURT: In other instances?

MR. MANEY: In other instances.

A The answer is yes, there are. They don't come clearly to mind, but I can think of a number of instances where we were very rigid on our policies either about exclusivity or about quarter spreads when other dealers went to an eighth spread or they went to split accounts. Some of our former issuers said, "Thank you very much, but we are going to go to A.G. Becker, Lehman or somebody else,"

at a time when they had a program with us and would pick right up and cover maturities coming up within a week.

There are also instances I can think of where evidently we had not made our view on exclusivity or sole representative for an issuer in the marketplace known well enough to the corporate treasurer that he might sell a block of paper away from us to some other dealer. These other dealers were shooting at us all the time and they might buy a block of paper. And it is just hard for me to imagine that if they ended up with a block of 3 million or 5 million of paper away from us that they had done the type of credit review and so on at the time that they bought the paper that they ended up with it. So, yes, there are instances like this.

Q Subsequently, Mr. Wilson, in your February 5 blue sheet there is a reference thereto. At the beginning of the second paragraph, you say, "I told John it was unfortunate we did not have some indication of the magnitude of the total losses for 1969 as we are going to need a story to tell existing holders of Penn Central's paper and its purchasers of paper."

What did you mean by "tell a story?"

A What I would have liked is that John O'Herron had gotten me on the phone a day or two ahead of time and said,

"Bob, we are going to have a press release coming out."

He would probably forewarn me I was an insider but confide in me on what the results were going to be, what this writeoff was, because I probably would have had a reaction and possibly even some suggestions for him at the time. As it turned out --

THE COURT: As to what to say in his own statement or what?

THE WITNESS: That could have been one, because I have done that with some companies, to review a press release and help comment on the language in it. But what I was thinking of specifically, if I had known this, say, on February 1 or something, I would have had the reaction that I had when I learned about it on the broad tape. There was going to be an impact on the marketplace. "Some investors aren't going to buy your paper, John. I think one of the best things to offset that is to have us say you have gone out and are in the process of getting $100 million more of bank lines."

And I would have advised him to do that on the 1st.

So it is this kind of a discussion, understanding, interpreting what I thought the market reaction would be and working out some kind of a game plan to alleviate what I thought was going to be a runoff from this news in the

market.

THE COURT: I can understand your wanting to know as early as you could about something like this, and I am not sure whether what I am about to ask is important: You weren't prevented from putting together whatever kind of statement you thought was necessary as soon as possible after the 6th, though, were you? Nothing happened between the 1st and the 6th that prevented anybody from making the same suggestions or prescribing the same course of action; is that right?

THE WITNESS: No, I think that's fair, only I was presented with the news, you know.

THE COURT: Let me ask you this. I understand why you thought it was unfortunate. At the very least you would want to know that somebody in your position was being kept au courrant as to what was going on with the possible exception of any problems caused by your being an insider. You say it was unfortunate you didn't have some indication of the magnitude of the total losses for 1969. I can't help getting the feeling from that statement that the magnitude of the losses was greater than you had anticipated. Is that right?

THE WITNESS: That is correct.

THE COURT: Would you care to characterize how

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much greater? Was it a big surprise, a mild surprise?

THE WITNESS: The surprise that I had was that I was expecting the fourth quarter to be in the black and if that were the case, then the consolidated profits would be the same or greater than what they were as of nine months. So my frame of reference or thinking was in that magnitude.

THE COURT: You expected the Transportation Corporation's operations to be in the black, is that what you mean?

THE WITNESS: Yes, that is what O'Herron had indicated to me.

THE COURT: What was the reaction to this news by the purchasers of the commercial paper? I suppose it is somewhere in the record but I don't remember having zeroed in on it.

THE WITNESS: I was wrong, that the outstandings did not run off as I had thought they would over the next 30 days. There are other changes that went on in here, and I am speaking now of getting the railroad to set up some swing lines, and our reducing this amount we were carrying in inventory turned out exactly to be what we were telling them all along, it was going to become a more efficient way of selling the paper, the investor could choose his maturity every day. So the outstandings were approximately

200 million about this time on February 5, and my recollection is that they remained at that level for the next sixty or ninety days. So I can't testify and tell you that all investors that had Penn Central on the approved list kept it on the approved list because I don't think they did, but I can't quantify it for you. The end result was that we were able to keep the outstandings pretty much at the $200 million level.

BY MR. MANEY:

Q Mr. Wilson, did you attend a luncheon meeting on February 6 with reference to Penn Central?

A Yes, I did.

Q Did you read over your blue sheet of February 6 marked PX-12 in preparation for today's testimony?

A Yes, I did.

Q Do you recall any subject matter being discussed at that luncheon meeting that is not reflected in the blue sheet?

A No, sir, I do not.

Q Do you recall a conversation or the subject matter of the budget for 1970 being discussed at that meeting?

A Yes, I do.

Q What was said in that respect?

A We were told that the budget for 1970 for the

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Transportation Company for the railroad operations would show a $56 million loss. Now, that was a projection, an estimate, of a $56 million loss.

THE COURT: This is not to be confused with the actual $56 million loss?

THE WITNESS: It was the same amount.

THE COURT: So I know.

THE WITNESS: It was not to be confused with it. They said it would be no greater than the loss in the railroad operations they had in 1969.

They then indicated to us that the consolidated profit for Penn Central would show an improvement over the $4 million consolidated profit in '69. My recollection is that the consolidated profit in 1970 was going to run between 20 million and $25 million.

They went on to say that the $56 million projected loss in the railroad operations was the official estimate but as a management team and in the financial office they felt that that was on the high side, that it would be a lower figure, it would be 25 to 30 million, I believe.

Q Do you recall anything else being discussed on the subject of the budget?

A Yes. We asked questions about how much their capacity expenditures, their capacity needs were going to be

for 1970, and they went through that by category for us.

Q What the needs would be?

A Yes, and how they were going to finance it.

Q And how they were going to finance it?

A Yes.

Q Was there a further discussion about backup lines, swing lines, demand lines at this meeting?

A Yes.

Q I am referring to the conversation of February 5.

A Yes.

Q What was said in that respect?

A I believe that I asked Dave Bevan and John O'Herron to get more bank lines to back up their paper. I had been asking for 100 percent line coverage. So this would have meant an increase of $100 million.

Their response to that was that, as I remember it --

THE COURT: You are now talking about their response on February 5?

THE WITNESS: Yes, at the luncheon, to this request to get bank lines, that they did not feel they could get $100 million of new lines because of the tight condition of the banking system at the time.

Q Did that have any credit importance to you?

A No.

Q Why not?

A (A) I didn't believe it because at that luncheon -- either the day before or at that luncheon we were talking about and obtaining $50 million of lines for one of the sister companies, the Pennsylvania Company, which the proceeds were to be used to loan upstream to the Transportation Company as this bridge loan. So to tell me that they didn't think they could get 100 million lines when they were in the process either that day or the day before of getting 50 million of lines for another company, there was another reason they had in mind. I thought I understood what that reason was.

Q What did you understand the reason to be?

A I don't think they wanted to pay the cost of it. Their compensating balances and the other costs related to bank lines and activating bank lines, I think they were very happy letting Goldman, Sachs carry the unsold portions in our inventory. So I don't think John wanted to do it, neither John O'Herron nor Dave Bevan wanted to do it. I think they could have done it.

MR. ATLAS: Is it my opinion this was Mr. Wilson's opinion, not what John O'Herron told him?

THE COURT: This was his opinion, yes, his

thinking in reaction to what he heard.

THE WITNESS: Correct.

Q Mr. Wilson, you discussed budgets. Did you ask for a written budget from the Penn Central?

A No, I did not.

Q Did you ask for projections from the Penn Central on a weekly basis or a monthly basis?

A Not that I can recall, no.

Q Let me show you three exhibits or copies of exhibits marked PX101, 102 and 103 and ask if you recall ever having seen these documents.

THE COURT: Are they in evidence?

MR. MANEY: Yes, your Honor, they are in evidence.

THE WITNESS: Could I go back and add something to a question that was asked earlier?

THE COURT: Certainly. You mean to the answer.

THE WITNESS: Yes, the answer to the question.

I believe you asked me what the credit significance was of their statement that they did not believe they could get $100 million of bank lines. If they had said, "Bob, we have just been to City Bank or Chemical or Bank of America, one of the big banks, and we had asked them and they said no, you can't have them," that would have been of importance to me from a credit point of view because I would

have pursued that in the sense of saying, "Why did they say no? Is it because they were allocating credit and they just didn't have it or was there some other reason? Was there a credit reason on the part of the bank?"

But I wasn't told that. I was just told they didn't think they could get them and I wanted to draw that distinction.

THE COURT: Do you know whether in fact they were turned down? Have you since learned that they were? I am not suggesting they were. I am just trying to find out.

THE WITNESS: Nothing has come to my attention during this period of time that in the Transportation Company they actually went and tried to get lines of credit. I think the $50 million was done in the Pennsylvania Company. I think later on after May 28, when the bond issue was pulled, that they may have tried to get bank lines, and that's where we came into the guarantee, the Federal guarantee. But in this period of time, nothing has ever come to my attention that a bank had said no to the Transportation Company.

THE COURT: All right.

Q Would you look at PX-101, 102 and 103. Did you ever see those documents or the originals or other copies of those documents prior to March 13, 1970? Prior to June 21,

1970?

A No, I do not believe so.

Q Did you ever see documents of that form from Penn Central prior to June 21, 1970?

A No.

Q Did you ever ask for such documents?

A This is the same form but for three different time periods, is that correct, the same format?

Q Yes.

THE COURT: Each of these being the same as each other, you mean?

THE WITNESS: The format looks to me -- I haven't looked into them. They appear to be the same. Put on three days, February 6, February 19 and March 6.

THE COURT: I think Mr. Maney is asking whether you ever asked for any documents of this kind.

THE WITNESS: No, I did not.

Q Why not?

A I didn't see any need for it. I had just finished having a luncheon with the Chairman of the Finance Committee and the treasurer of the railroad and they told me what their forecasts or estimates for 1970 were going to be. So I saw no need to ask for the underlying documents and all the assumptions that would go into these figures with all

the various subsidiaries and the assumptions on earnings and so on that would go into each one of those blocks that would go into this final product. No, I did not ask for it. I had the end result from the Chairman of the Finance Committee.

THE COURT: Was it customary and your ordinary routine when you were meeting with officers of an issuer to ask for written substantiation of reports or projections? What was the custom with regard to that? I will put it that way.

THE WITNESS: My recollection is that in the '68, '69, '70 period that we would meet with the financial management of each of our issuers shortly after their calendar year and ask them what their financial plans were for the coming year. Now, some companies brought in schedules and would speak from them or would show them to us, some would even leave them with us, and other companies would not take that approach but would talk in sum totals and in generalizations about what the aggregates were, if there were consolidated figures, for instance. So there was no uniform pattern in this.

THE COURT: In other words, you didn't follow the routine that banks do with regard to some class of loans, by making the borrower submit some kind of a statement which

was analyzed before you decided what action to take or review it from time to time?

THE WITNESS: Well, we had the balance sheet figures, audited balance sheet figures, and in this case --

THE COURT: You had them on hand at all times?

THE WITNESS: We had those. They would bring them in after their calendar year and we had those to work from. But in terms of forecasts we did not have that as a requirement to ask for written forecasts from the companies.

In fact, there were some companies that their counsel even advised them that they wouldn't let Goldman, Sachs have them.

BY MR. MANEY:

Q Mr. Wilson, on your blue sheet of February 6, the second page, there is a statement there: "I also explained Alan Rogers' conversation with Jack Vogel."

Do you see that?

A Yes, I do.

Q Do you recall how you had learned about the Rogers-Vogel conversation?

A It is not clear to me whether I learned it first from Jack Vogel having written it up in memorandum form or whether he came right into my office right after he had it. I suspect it was the latter and the report followed it up.

But I cannot testify right now with any certainty which way it was.

Q Do you recall seeing Mr. Vogel's blue sheet of that conversation?

A It wasn't a blue sheet, I don't believe; if I remember the credit file, it was a straight memorandum. It could have been a blue sheet, but I don't think so. But I do remember seeing it.

Q Do you recall whether you had read Mr. Vogel's memorandum at the time that you prepared the blue sheet of February 6?

A I believe I did, yes.

Q What did you understand about the conversation between Mr. Rogers and Mr. Vogel?

MR. ATLAS: Objection, your Honor.

THE COURT: Sustained. I don't think it makes any difference what anybody but Mr. Vogel can tell us about the conversation. You can ask, if it makes any difference, I don't know whether it does, what Mr. Wilson said to Bevan and what his purpose was in mentioning it, what he meant to convey.

Q Would you answer the Court's question?

A If I have the question in mind --

THE COURT: First of all, do you recall what you told him?

THE WITNESS: Regarding this Alan Rogers --

THE COURT: Yes.

THE WITNESS: Yes. That I had -- I was telling him that we, Goldman, Sachs, had had a phone call from Alan Rogers, and Mr. Rogers was going to continue to rate the paper in their highest category of prime. It is not clear to me whether I indicated to Mr. Bevan the whole conversation that was related in the Jack Vogel blue sheet, namely Rogers asking whether we were going to continue to offer the paper, but I suspect it was in that --

THE COURT: Well, your blue sheet says, "I also explained Alan Rogers' conversation with Jack Vogel and that Alan's feeling was that as long as Goldman, Sachs was going to continue to handle Penn Central's commercial paper he would keep the prime rating."

So that sounds as if you told that to Mr. Bevan.

THE WITNESS: Okay. Am I allowed to look at this?

THE COURT: Oh, yes. I'm not trying to second-guess you. I'm trying to say that if you have any doubt about it, you wrote it here, and since you agree you wrote

it here, you must have told him.

THE WITNESS: Yes.

THE COURT: What kind of message were you trying to get across; why did you tell him this?

THE WITNESS: It is very hard for me to go back into this set of facts and tell you with any certainty what my intention was, but I, as I read over this, I think it was to let the railroad management know that the only agency that rated their paper was looking at that prime rating as a result of the news that was in the press before, namely, the 4 million consolidated profit, and the losses in the Transportation Company, and what this meant to me is that Alan Rogers was going through his own review of the railroad, because it was their highest category, and was touching base with Jack Vogel and Goldman, Sachs as part of that review. And I wanted the railroad to know that. This was our job as their dealer to let them know not only what is going on in the market, but when we get a phone call from the rating agency.

Q Mr. Wilson, your blue sheet of February 6 sets forth, as you testified, how the railroad planned to raise the funds that it needed for 1970. Without going over them in detail, would you explain whether you considered those plans to be feasible means of raising those funds, and if so,

on what did you base that judgment?

A There were two types of financing they were talking about with us at that luncheon. One was the equipment trust certificate type of financing. That was either 60 million or $70 million of financing. I have always felt that rolling stock, equipment trust financing, was a very viable type of financing for a railroad to do, and so I saw no problem at all with the railroad doing and completing that program. As a matter of fact, I think a good portion of that 70 million had already been agreed to and negotiations were underway to do that $70 million. The market for equipment trust certificates was very strong. So I thought that was a very feasible program.

The second category had to do with longer term financings, and as I recall it, at this point in time, there were two specific bond offerings they were considering. One was $100 million in the Penn Central Company. That would be the holding company.

THE COURT: Right.

A (Continuing) And details were not firmed up on this, but they were talking about having conversion rights for the bond holders, conversion either into the Pennsylvania Company or into the Great Southwest, one of the large unencumbered equity possessions within the Pennsylvania

Company.

As time went along, that particular financing changed form before it was finally, the prospectus was written in May and offered to the market.

There was a second financing, long-term financing that was discussed at this time, $100 million, $75 hundred million, that was being considered later on in the year, that they were thinking of going with the Pittsburg and Lake Erie; again another railroad subsidiary that was very conservatively capitalized and in my opinion could have put a layer of long-term debt in that subsidiary, in that amount, and could have lent the proceeds upstream to the Transportation Company.

So at the time they were talking about doing these financings, to take care of their capital needs in 1970, I felt these were reasonable and feasible.

Q That first bond deal in the Penn Central Company, was that ultimately offered?

A There was an offering made in May for $100 million, and I believe it was in the Penn Central Company.

THE COURT: Did it ever get off the ground? I forget.

THE WITNESS: No.

THE COURT: Was that the one for which they sought

Federal guarantee?

THE WITNESS: No. This was an underwriting by First Boston and Salomon Bros. and others to underwrite that $100 million offering, but the market was so bad in the latter part of May that they had to pull that bond offering. This is a time when the Dow Jones was down around 650 and Kent State and Cambodia and all the other unsettling things that were going on in the marketplace, and they had to pull that bond issue.

Q Mr. Wilson, I show you Exhibit FJ for identification, and ask if you can tell me what that document is.

A This is a document that I had prepared at my direction in June of this year, and it is taken directly from Elliot Sharp's Corporate Newsletter that is put out every day for the period of time, March 1 to June 30, 1970, which goes back into this specific time frame and indicates those new proposed bond offerings that had come to market. It indicates those bond offerings which were previously announced and postponed, and very often will indicate the reason, or a temporary delay, and it is that type of data that is in this report.

Q There is some handwritten symbols in this document. Do you know what those are?

THE COURT: On the left? They are obviously the

dates, far left.

Q Like BB on the first one.

A Yes, these are the bond ratings.

THE COURT: Of Moody's?

THE WITNESS: Of either Moody's or Standard & Poors, and I can't tell right now whether the Moody's is on the left of that slash line or the righthand side of the slash line.

THE COURT: I think the code is at the top. It says SP/Moody's, so I suppose --

THE WITNESS: Okay, there is the code right there.

THE COURT: What does it mean in item 19, not item 19, where it says 19, it should be item 3, on the righthand side there it says an A/NR, does that mean no rating?

THE WITNESS: I believe so. And it could be as of the time of that filing that they had not, in the preliminary prospectus that was done and filed, that they had not gotten the other bond rating yet.

THE COURT: All right. Who is Mr. Fensterstock. Is he one of your staff?

THE WITNESS: He was an employee within our credit department this past summer.

Q And he is reporting from Elliot Sharp's Corporate

News?

A That is correct.

Q A statistical service regularly used by persons in the investment banking business?

A Yes, particularly in the syndicate departments of the Wall Street firms.

MR. MANEY: I offer Exhibit PJ in evidence.

VOIR DIRE EXAMINATION

BY MR. ATLAS:

Q Were these handwritten notations made by Mr. Fensterstock?

A Yes.

Q This past summer?

A Yes.

Q Is he a summer student of some sort, college student?

A I believe he had graduated from undergraduate school and was starting with Columbia this fall. That is correct. And I asked him to go back and get all the Elliot Sharp Newsletters from March 1 to June 30, 1970, and I wanted to know the number of postponements of issues that had been filed and postponed for this period.

MR. ATLAS: No objection, your Honor.

THE COURT: All right.

xx (Defendant's Exhibit FJ received in evidence.)

BY MR. MANLEY:

Q On February 6, 1970, did you have an understanding as to the capacity of the Pittsburg and Lake Erie to support a bond offering?

A I can't say that I had it as of February 6, but shortly thereafter, when the idea was set forth, I believe that I had somebody in our credit department take a look at it to see how leveraged it was and what was the capacity to do a financing in that subsidiary.

Q We have a conflict here as to whether you said something, Mr. Wilson. Did you conclude that the Pittsburg and Lake Erie did have the capacity to support a bond offering?

A I concluded that it did based on whoever I asked, whether it was Vogel or --

THE COURT: When did you conclude that, approximately?

THE WITNESS: I can't tell you for certain. I don't know. This was the first time that I heard that --

THE COURT: Would you say a matter of days?

THE WITNESS: I would think so, yes.

Q Mr. Wilson, I show you the blue sheet of March 23, 1970, marked PX-14, not part of that package. Is that your

blue sheet?

A Yes, it is.

Q Do you recall that telephone conversation with Mr. O'Herron?

A Not specifically and not beyond what I have read within this blue sheet in preparation for this trial.

Q I call your attention particularly to the statement about the middle of that memorandum. "I told him" -- well, skip that.

"G.S. & Co. felt that a $5 million ceiling was appropriate until such time as they obtained 100 percent line coverage, completed some of these long-term financings and started to reduce the operating losses."

Do you see that sentence?

A Yes, I do.

Q Do you recall making that statement to Mr. O'Herron?

A Yes.

Q Why did you make that statement to Mr. O'Herron?

A I think I was irritated at him.

Q Will you explain that a little further?

A I had been asking him for some months in here to get some more bank lines, to obtain some more swing lines, and here it is five or six weeks after we had had lunch on February 6 and I haven't gotten any results yet, and now he

presents me, I think I had come back from vacation here and he presents me saying that the first quarter figures are going to look terrible, and to my mind, there was going to be certain investors that were going to temporarily stop buying some of this paper, and there was going to be a runoff of 50 million or 100 million or some number like that, and he wasn't doing what he was hiring us as experts in this field and he wasn't following my advice, and so I said, "All right"--

THE COURT: "I mean it."

THE WITNESS: "I mean it, and I'm now going to up the ante on you. I'm going to say you have got to get this financing done which you have been talking to me about since February. You haven't filed it yet. And one way I'm going to force you into your own bank lines is to put some kind of a target or a ceiling in here of a relatively small amount, $5 million," and so it was the next phase of the negotiation he and I had had going on for sometime.

Q Did you in fact rigidly adhere to that $5 million ceiling?

A No.

Q Did you conclude at any time in March, 1970, as a matter of policy to stop inventoring Penn Central's paper?

A No, I do not believe so.

Q Did Mr. O'Herron's statement to you about the

first quarter figures have any significance from the standpoint of credit?

A Well, I couldn't pin John down. I tried to find out just how bad "terrible" was, what magnitude it was, was there going to be a consolidated profit or loss.

As I recall, there were still some rate cases that that had been applied for. I don't think they had come through. And the accountants weren't being very specific. He couldn't get a handle on the number and I didn't know just what it meant in terms of size. So that was one reaction that I had to this.

There was a second reaction that I had that I was anticipating that the first quarter would be a red quarter, where there were losses, in the Transportation Company, now. So, since I couldn't get a handle on what the "terrible" meant, it was still within, conceivably still could be a profit, consolidated profit. No, it was something I wanted to think about, but in the framework of all the knowledge that I had about this railroad, I did not think it changed -- it did not, not think, it did not change my judgment of credit worthiness.

Q When did you for the first time learn of the actual figures for the first quarter?

A I believe at the time everybody else did, on April

21 or 22, whenever the news release came out.

Q There has been some prior testimony in this trial about advising salesmen to read or to at least make investors aware of those first quarter results. Do you recall that, Mr. Wilson?

A Yes.

Q Who so directed these salesmen?

A I did.

THE COURT: Who did what?

MR. MANEY: Instructed the salesmen.

A I did.

Q What did you instruct the salesmen to do?

A I don't remember my exact language but --

THE COURT: What time are you speaking of now?

THE WITNESS: Well, we received the actual press release, I believe the afternoon of the 22nd.

THE COURT: Of April?

THE WITNESS: Of April. I got the credit department to put this on a green sheet, and I made sure that our salesmen had those green sheets as far as they could. Obviously, I don't know what we did about the salesmen out of New York, but in New York, that we got them to them right away, with the idea that accounts that had been buying Penn Central paper that were going to ask for it, to buy some,

I wanted to make sure that the salesmen referred to that green sheet containing the press release, so the investor would know about the losses, and just in case he had not seen them in the Journal or the Times that day, that he would know about them.

Q Why did you instruct the salesmen to do that?

A Well, I had been all through this period living with this inventory problem at Goldman, Sachs, the ceiling at 250 million, constantly having to go to the Management Committee, knowing how badly our department's earnings were impacted by markups and by negative carries on our inventory possessions, and to me this account was going to, because of this news, the first quarter news, and I really thought it was going to happen back after the year end results in February, was going to meet some resistance in the marketplace. I didn't know whether it was going to be a 50 million runoff or 100 million, and I didn't want to complicate our inventorying problem by going ahead and making sales to some account for 3 million, 5 million, $10 million, and then find that the account had not seen this news, and his Chairman of the Board or some director would come into him and call him and say, you don't have any of that Penn Central paper, do you, and if he said yes, can you sell it back to Goldman, Sachs, and then we would have this unwinding of

transaction, and I was trying to anticipate that problem.

And I believe that is the rationale that I had in instructing the salesmen to let the accounts that were going to buy the paper know about this.

THE COURT: Mr. Maney, with the good news that Mr. Breindel gave me at the beginning of the session, I think since I have to be at the meeting in ten minutes, I am going to quit now, and I will see you all in the morning.

(Adjourned to November 4, 1975, at 10:00 o'clock, a.m.)

UNIVERSITY HILL FOUNDATION

vs.

GOLDMAN, SACHS & CO.

New York, New York
November 4, 1975 - 10 a.m.

(Trial resumed.)

THE COURT: I am mindful Mr. Breindel thought we possibly could conclude this morning. I regret I have to leave here at 12:30. If we haven't concluded, I have the whole afternoon.

When we do conclude I would like to discuss questions of summations and questions of a description of the contents of the depositions to be submitted and the contentions of the parties as to the depositions.

MR. MANEY: Your Honor, on that point, I would like to argue promissory estoppel, but relying on Mr. Breindel's estimate, Mr. Wilson who had planned a business trip to California, he has a plane reservation.

THE COURT: All right.

ROBERT G. WILSON, resumed.

DIRECT EXAMINATION CONT'D

BY MR. MANEY:

Q Mr. Wilson, let me show you Exhibits EK, EL, EM and EN, and Plaintiff's Request, to round it out, Exhibit

PX-72 for identification.

Mr. Wilson, your testimony yesterday was as I recall, there were other instances beside the Penn Central when the paper of an issuer was returned from inventory to the issuer to reduce inventory; is that correct?

A That is correct.

Q You said you determined that by examination of certain documents.

A Correct.

Q Are the documents which you examined to ascertain that information those documents that are before you, Exhibits EK, EL, EM and EN?

A Yes, they are.

Q Could you explain how you were able to determine that information from those documents?

A Well, Avco Corporation, which is Exhibit EK, the center set of columns entitled "Return to Company" and knowing that the corporate tax date is one normally where our inventory is under a great deal of pressure, I spotted the fact on December 15, 1969, we returned six blocks of paper, totaling $10 million with various maturities as short as January 28th, and as long as March 4th.

Q That January 28th, isn't that the 19th?

A Excuse me, you are correct. As short as

February 9th.

THE COURT: There is one on February 3rd, isn't there? Let's see if we are looking at the same thing. I have a photocopy. Is this the same material here?

THE WITNESS: Yes. Those add up to $10 million and there are six blocks of them, with fixed maturity dates.

A (Continuing) I then looked at --

THE COURT: What I don't understand is -- I understand what you told me -- but, why do you disregard the other items in that column?

THE WITNESS: Well, they're in size, a block of $10 million is a reasonably good return on one date.

THE COURT: The ones up above look pretty big too. On July 25th, for example --

THE WITNESS: I have no clear view in my mind of July 25th. I have a very clear view of corporate tax date December 1969.

THE COURT: I understand you might want to distinguish about your independent recollection from other items entered here which you do not personally recall, but I want to understand the figures in this column --

MR. MANEY: I think Mr. Wilson is using an example.

THE COURT: Examples aside, and it is helpful to have an example, I want to know if all those figures in this

column do represent returns as indicated.

THE WITNESS: Absolutely.

A (Continuing) Then I went over to Exhibit EN, and I had reconfirmed what I knew was going on in December of '69, and it is the first column now for the dates December 12, 1969, and December 15, 1969.

THE COURT: First column on what page?

THE WITNESS: It starts in '68. You should go to the page, the far left column the date is December 12 and December 15, 1969.

The second column from the left is the total inventory that Goldman, Sachs had, at the end of that day.

THE COURT: For example, the end of December 12th is 16,050.

THE WITNESS: No, 243 million.

THE COURT: And December 15, 304, and of course that's in thousands.

THE WITNESS: Correct.

A (Continuing) So, why this example is so clear to me, the December tax period of 1969 was the tightest portion of the money market crunch that we had in 1969.

Tax date is a day when the corporations pay their taxes and they don't turn around with excess cash to buy papers, so we know from experience on those tax dates that

we will not usually be able to cover the maturities we have coming due on that date, and our inventory historically has been used to pick up the unsold portion.

THE COURT: Somewhat similar I suppose as banks --

THE WITNESS: Their loans go up on tax date, that's correct.

THE COURT: What figure, if any, on these lines of December 12th and 15th, indicate returns?

THE WITNESS: If we can go over to, I believe Avco is the fourth column over, the column, the number on December 12th, 1969, that reads 21 million 250. That's the amount of Avco we had in inventory at the end of Friday, the 12th, and you can see from the previous three or four days, 23 million, 22 million, 21 million, 21 million, and so Van Cleave evidently said to Avco, we got a tax date coming up, will you help us out, we want to return 10 million of paper that's in inventory because we know we'll get hit on the 15th with a lot of unsold material which we'll try to accommodate.

So, he returned the $10 million.

THE COURT: As you can see by the next entry.

THE WITNESS: Correct, and even doing this specifically, we couldn't stay within our ceiling, and it went up to 403 million. If I hadn't returned it to Avco,

it would have read $314 million.

This is an illustration of returning paper in inventory to the issuer.

MR. ATLAS: Your Honor, I would object to this explanation by Mr. Wilson. It is speculation as to what Mr. Van Cleave may or may not have been doing.

THE COURT: It seems to me that plaintiff alleges, and perfectly naturally, that the Penn Central return, if you want to call it that, was a special situation. I think the defendant is entitled to show it is not a special or unique situation and to have that before me to judge what it means.

MR. ATLAS: The figures are there to be read. The point is I object to Mr. Wilson advising the Court as to what Mr. Van Cleave's motives or --

THE COURT: I don't need to worry about that. I don't care what the reason is. I won't say I don't care, but I think Mr. Wilson is competent to testify as to why in the ordinary course of the business of Goldman, Sachs there are returns, and I believe his testimony is probative, and if you don't believe in it, you can call another witness to establish it. I am not taking his testimony as to what Mr. Van Cleave intended, but as to his understanding of the business of Goldman, Sachs.

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Q Mr. Wilson, his Honor inquired about July 25, 1969.

THE COURT: On FK?

MR. MANEY: On FK, for Avco.

A Yes, I see that. It looks like there are four blocks of inventory paper, totaling seven million five.

THE COURT: I think it's eight million.

A Yes, eight million five.

Q By reference to FN, can you determine whether those returns were to substitute for other names or whether they produced inventory?

A By looking at FN, for July 24th, 1969, and then July 25th, 1969, I see an Avco --

THE COURT: That is still the fourth column?

THE WITNESS: Correct.

A (Continuing) That the days previous we had been running 15 million, 16, 16, 17, 14, eight million, and eight million being on July 24th.

THE COURT: Is that '69 or '68?

THE WITNESS: '69.

THE COURT: I'm confused. I don't see those figures here.

THE WITNESS: July 24th, the fourth column, and here is Avco.

Here are my numbers (indicating).

THE COURT: Thank you.

You started with the 17th?

THE WITNESS: Correct. Just to give some background, that this was one of the larger inventory names we were carrying.

On July 24th, we had eight million five at the end of the day on the 24th, and this EK shows we returned eight million five on July 25th, and the inventory was zero as of the end of the day on July 25th.

Q Do you recall the circumstances of that return?

A No, sir, I don't.

Q I show you Exhibit EV for identification, and ask you if that refreshes your recollection.

THE COURT: Is this in evidence?

MR. MANEY: No, your Honor.

A I have read the Exhibit EV.

Q Does that refresh your recollection as to the circumstances of the $8,500,000 return?

A Yes, it does.

Q Without reference to the exhibit, what were the circumstances of that return?

A That we were experiencing a tough money market in July, that the Avco notes were not selling as freely in the market as we would like, and therefore inventory was

high in Avco notes, and we were exploring with Frank Suozzi, who was the man we dealt with, and we were exploring with him if he could take back some of our inventory.

On July 22nd he indicated he might draw down his compensating balances that he had at his bank to take back the paper, but then on the 24th he said he had received cash from the sale of some property, and he would be glad to use the proceeds from the sale of that property to take back the paper which he did, on the 25th.

Q Mr. Wilson, referring to Avco and Dow, do you know what their positions were in your inventory, say in the beginning of 1970?

A Yes.

Q What were those positions?

A We had what we call the top ten list of the top ten inventory positions that we had on any given day. Both Avco and Dow ard Penn Central were in that group.

They all weren't number one each day. They would move around from one to ten and occasionally drop out of it, but by and large they were on the list consistently.

MR. MANEY: Your Honor, I offer FK, FL, FM, FN, and by Plaintiff's Request, I suppose to round out the data, PX-72.

MR. ATLAS: Your Honor, once again we note our

objection that the Avco, Dow Chemical, Chrysler situation is not relevant to the issues involved.

THE COURT: Overruled. The exhibits are received.

xxx (Defendant's Exhibits EK, EL, EM, EN for identification and Plaintiff's Exhibit 72 for identification received in evidence.)

Q Mr. Wilson, did you at my request attempt to calculate the gross receipts received by Goldman, Sachs for handling Penn Central's commercial paper from 1968 through 1970?

A Yes.

Q Did you perform the calculation?

A Yes, I did.

Q Will you explain to the Court how you went about the calculation and what results you obtained?

A If I could have a pad and a pencil.

I am drawing an X axis, which is going to be years --

MR. ATLAS: As I understand the question and the answer, Mr. Wilson indicated he didn't make this computation until quite recently. It was not made during '69, 1969 and the first quarter of 1970. If that information wasn't obtained in that time period, I don't see the relevance.

THE COURT: I assume the relevance is to show the

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extent to which this was a profitable line of business thereby relating to motive.

MR. ATLAS: If it wasn't aware to Goldman, Sachs, it can't be relevant, if they're being aware of it now.

THE COURT: I don't think anybody said they weren't aware of it. I think you can be aware of the things in varying degrees, either specifically or within your bones as a businessman running a business. You can explore to the extent they had actual knowledge at the time.

A On the X axis I have put the years '68, '69 and '70.

We took the paper on in August 1968 and the first authorization from the ICC was for a hundred million dollars.

What I am going through is a very conservative, simplistic calculation and I am going to assume that we went right to a hundred million dollars on August, and we did that through, I believe, April of '69, when we got the next authorization to go to 150 million.

So, August '68 through April '69, is August, September, October, November, December, January, February, March, April.

THE COURT: Eight months.

A (Continuing) An eight-month period. One-eighth times $100 million times two-thirds of a year, one-eighth

times a -- And that is roughly $80,000.

Assuming then April '69 through November '69, where the next layer was -- we went to 150 million -- April, May, June, July --

THE COURT: Seven months. I can tell you that.

A (Continuing) Two-thirds, seven months, would be seven-twelfths. It was through November, so I had it two-thirds again.

THE COURT: It is through November?

THE WITNESS: Yes.

THE COURT: Then it is eight months.

A One-eighth times $150 million would be $125,000. And then, from November through -- the decline started in May I guess -- but, say through April, November through April are $200 million, and you have December, January, February, March, April, May -- say six months, or one-half. One-half, times one-eighth, times $200 million, is --

THE COURT: 125.

A -- 125 again, which comes out to $330,000 optimum, maximum amount.

We didn't, in fact, in August '68 go directly to a hundred million. We went to 47 million and worked it up gradually and there were periods when all through this, when we were below the full amount of the authorization of

the ICC.

So, the figure of 330,000 is an outside maximum amount of intended spread as I have calculated.

It does not include the cost that we had, having to mark up Penn Central paper with a negative carry on Penn Central, and it certainly doesn't include the various costs that we had of selling Penn Central paper.

So, the gross intended spread would be less than this $330,000 that I have indicated.

Q Mr. Wilson, did you at the time have any idea of, let's say, aside from fixed costs of maintaining the department overhead personnel, of the incremental costs of executing transactions in commercial papers?

A Yes, we had done a lot of work on this because our costs were rising and I had a cost per trade, handling any trade.

Q What was that?

A My recollection is it ran $25 per ticket.

THE COURT: That wouldn't be too significant a factor in such large items as this, would it?

THE WITNESS: I would think so. There were many, many hundreds of transactions on the Penn Central account alone, purchase and sales tickets.

Q That could be ascertained by reference to the

computer run reflecting each transaction?

A Yes.

Q Mr. Wilson, a moment ago I showed you Exhibit EV for identification.

I now show you Exhibit EW for identification, and ask you if you recall having seen or received that exhibit on or about the date it bears.

A Shall I read it?

MR. ATLAS: Excuse me, your Honor, I don't think these are designated on defendant's pretrial order. May we have a copy?

MR. MANEY: I thought it was.

THE COURT: You can read it --

MR. ATLAS: I just want to see it.

MR. MANEY: Apparently by oversight it was not added to the list so I will not ask Mr. Wilson about it.

Q Mr. Wilson, yesterday I believe you testified that you anticipated when the first quarter earnings were announced that some investors would temporarily get out of Penn Central. Do you recall that testimony?

A Yes.

Q Explain what you mean by "temporarily."

A Well, I felt there would be some accounts that had been buying the Penn Central paper that would want to

digest these earnings results, and do whatever analysis they wanted to do with them, and determine whether they wanted to continue to buy the paper or just, for a short period of time, not buy paper and buy something else and then come back later on.

THE COURT: This was in February?

THE WITNESS: No, I believe the question was after the first quarter results.

THE COURT: That would have been what, about April?

THE WITNESS: Did I hear the question right?

Q I believe your testimony was in relation as to discussions on March 23, anticipating at some future date the public announcement of the first quarter results, discussions with Mr. O'Herron.

A I'm lost as to what the question is, the time frame of it.

THE COURT: Yesterday we went over a blue sheet, I think it was; isn't that right, Mr. Maney, a blue sheet of March 23rd, and I believe that indicated you had a conversation with Mr. O'Herron in which he told you that the losses would be bad, or something like that.

Q I show you a copy of Exhibit PX-14.

A Yes, I have glanced over this.

Q Do you recall -- I am not asking you if you recall

what you said yesterday -- do you recall that at the time of the conversation with Mr. O'Herron you anticipated there would be a runoff of Penn Central paper if the first quarter results were announced?

A I don't see it on the blue sheet, but after having been wrong at the year end results, if they followed it off with losses in the first quarter, I thought that might trigger the type of runoff with what I was concerned. I did have it in my mind.

Q Yesterday you used the word "investors getting out temporarily." What did you mean by "temporarily"?

A The fact that those investing accounts that would do their own credit analysis would take a look at the results, and would do whatever analysis they wanted to do, and conclude that maybe they didn't want to buy this paper for a short period of time. Some might conclude, after looking at it, that they would go ahead but they want some time to consider it.

MR. ATLAS: Your Honor, I don't think that answer was responsive to Mr. Maney's question as to the temporary withdrawal.

THE COURT: He explained that's what he meant. You may or may not agree that's a good explanation, but that's what he meant.

Would you agree, Mr. Wilson, someone might also decide to stay out for good?

THE WITNESS: Possible, or they could have been out for a few days or a week or two or until the bond offering was done.

THE COURT: Was there a lot of -- I know I am using terms loosely -- a lot of commercial paper around in those days? In other words, if I were a holder of Penn Central commercial paper and got upset by the earnings figures, could I drop Penn Central paper and go to some other paper which would be equally attractive?

THE WITNESS: There were over 500 issuers in the market at the time and depending on what the particular investors' accounts, tests or standards or guidelines or reasons for buying paper, I would think that in many of the investors, there was easily a substitute name in the marketplace.

Q Do you recall how many of those 500 were going out six months in March 1970?

A No, I don't.

THE COURT: Definitely a limited number though?

THE WITNESS: The average maturities of the overall sales, my recollection is back in that period of time, was in the 40, 45-day area, so six-month trades was a very small

segment of the market.

Q Mr. Wilson, have you heard of the Continental Insurance Company?

A Yes.

Q Did you have any personal dealings with this company?

A When I was a commercial paper salesman I handled the account.

Q I show you a copy of a document in evidence, PX-42.

Do you remember receiving a copy of that memorandum on or about the date it bears?

A I believe so, yes. I was certainly aware that Continental had taken off the Penn Central name at the time, not on the same date but that time frame, yes.

Q Did you make any inquiry of Continental as to the reason for that action?

A No.

Q Why not?

A I had found this a particularly awkward account to sell to. They only had a few names on their approved list, and I was totally unsuccessful in having a number of our names added to the list and I could never really understand the rationale as to why names went on the approved list.

When they decided to take a name off because of a newspaper article, it didn't have any particular significance to me.

Q Mr. Wilson, I believe you testified that in your judgment Penn Central had the capacity to repay its commercial paper as it matured, at least up through March 1970; is that correct?

A That is correct.

Q And yet Penn Central did file for reorganization on Sunday, June 21, 1970.

A Yes.

Q Do you have an opinion as to, first, what went wrong with Penn Central and, second, whether that filing for reorganization was necessary?

A Yes, I do.

MR. ATLAS: Objection, your Honor. It calls for an opinion or conclusion way after the fact. I don't think it's relevant.

THE COURT: I don't see why the fact that you ask for an opinion after the fact is irrelevant. You can't use an opinion as to an event until the event has occurred.

You may argue regardless of what Mr. Wilson now thinks these matters to be judged as to what happened at an earlier time, but I will accept the testimony.

MR. ATLAS: Your Honor, Mr. Wilson is being asked to give an opinion as to the operation of the Penn Central, why they did or did not do something. It would be different if he was called upon to give an opinion as to Goldman, Sachs. To ask Mr. Wilson to give his opinion of Penn Central, I think is objectionable.

THE COURT: I don't see where the distinction is being made.

MR. ATLAS: He is being asked as to the feasibility or certain act taken by Penn Central, not by Goldman, Sachs or anyone in his organization.

THE COURT: I understand that, but I don't think you can say it would be all right if he were asked the latter question. That's not the question at all. The question is, whether it is relevant or appropriate. I am not settled in my own mind as to whether it is, but I will accept the testimony and consider it.

A Yes, I do have a view on this. Would you like me to express what it is?

Q What is that view?

A I think this is a classic example where the management of a major corporation blundered.

I had held the view, from the time before we took it on, during the time that we handled the paper, that this

railroad had ample resources to bring to bear to maintain its working capital position while economies were being put into effect in this merged railroad.

We even had discussed some of the alternative plans that the management could use to raise cash, to supplement its working capital during this period of time, and they're in the blue sheets.

One of them that comes to mind is their lead bank called up and volunteered to raise the revolving credit agreement to cover all the paper, a hundred million dollars.

THE COURT: First National City Bank?

THE WITNESS: Correct.

A (Continuing) There is an instance, a suggestion that we had been encouraging John O'Herron of setting up a captive finance company, to finance receivables, a practice very common with major corporations.

THE COURT: Like GMAC?

THE WITNESS: Yes, and John Deer Credit, et cetera.

A (Continuing) Those were two specifics.

It was clear from my own thinking and from the judgment I have gotten from Jack Vogel that there were unsecured, unpledged assets within some of the --

THE COURT: Is this information you had at the time?

THE WITNESS: Yes. There was a prospectus in the

bond offering in December, I think a 50-million-dollar bond offering in the Pennsylvania Company, that spelled out the hundreds of millions of dollars of unencumbered securities and assets that were available in the Pennsylvania Company.

So, to me it was a question of having the assets -- I think this is what the banks viewed and certainly what we viewed -- and the blunder in all this is as they went through in the early part of 1970, they evidently ran into a lot of circumstances they either hadn't foreseen or hadn't planned on.

What I am talking about now is, they planned to do this hundred-million-dollar bond offering in April or May. That bond offering got postponed because of the unsettlement in the bond market, as many other bond offerings were postponed.

It got postponed because the accounts that would buy the bond were concerned about the low stock market that averages down around 650; the unsettled political positions having to do with the Kent State, and Cambodia invasion.

I thought they could get that bond offering done, but things happened during that period and it was postponed and they evidently didn't have an alternate plan right behind it and they had to fall back on this request to get a Government guarantee which everybody thought was going to go

through right up until the end, the last day, the last couple of days I guess, and they had run out of time. They had all these options and alternate plans to finance, to generate cash.

So my answer is, this is a managerial blunder, a classic one. Competent management that hadn't seen it or whatever and hadn't taken the time to think it through and to put some of these actions into plan so they would have the cash.

THE COURT: Mr. Wilson, yesterday I asked what information you might have had or was asked for that could have enabled you to foresee the seriousness of the situation that you didn't have.

THE WITNESS: It's very hard for me to think of any because of the contacts that I had with the senior financial officers of the railroad, right on through this February, March, April, May, June period that did not give this picture.

THE COURT: Do you feel that they withheld any information from you, which according to the standards of your profession they should have disclosed, even if you didn't voluntarily ask for it?

THE WITNESS: I can't think of anything specifically in terms of figures or forecasts or numbers they had

internally because I haven't seen anything that's come out of the pretrial preparations and so on, and what I've heard in other trials, that would lead my thinking along that line.

The one question that does come to my mind is whether Mr. Saunders, Mr. Dave Bevan, and the others, really had maybe in the back of their minds that they would like to unload this unprofitable railroad onto the Government and the taxpayers, and keep the other subsidiaries that were earning so much in the way of earnings and profit, and maybe that was in some of their thinking at some point of time. I can only ask the question in a hypothetical way.

I think I'm probably more suspicious of it now, but it certainly didn't come through in any of my discussions with them.

THE COURT: Thank you.

MR. MANEY: Thank you, Mr. Wilson.

You may cross-examine.

CROSS-EXAMINATION

BY MR. ATLAS:

Q Mr. Wilson, how many issuers is a commercial paper that Goldman, Sachs represents?

THE COURT: It must have varied. Over the average?

Q On the average.

Before you answer, my questions will be directed

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to the same time frame Mr. Maney was asking about.

A You're talking about to around March 16th or so.

Q During 1969, the first quarter of 1970.

A I would say that at any one time we had close to 200, 190 to 200 active issuers in the market and in the course of a year's time span, there would be some that would be out of the market and others coming in and it might run as high as 225, or even 250.

Q What about 300?

A Possible, but it's five years ago. I'm not clear on it. That would be my recollection at this time.

Q Did you prepare the blue book that's been referred to, Mr. Wilson?

A I was one of the co-authors.

Q And did you know that the blue book contained a statement that there were 360 commercial paper issuers?

A Over what time frame, two, three years?

Q It indicates as of March 1970.

A That would be a correct statement if you were going back over a two- or three-year period. I thought your first question to me was, in one year, in any one year. If you're going to encompass two or three years, clearly there are some issuers that do financing, go out of the paper market for two or three years, and --

Q Would you take a brief look at page 3 of the blue book, Mr. Wilson. Item 5 on that page, Mr. Wilson.

A Yes.

Q Does that indicate 300 commercial paper issuers?

A Item 5 on page 3?

Q Yes.

A Credit committee.

Q For periodic review of 300 commercial paper issuers. Did that mean as of that time or is that the total of a whole year?

A To clarify this point, I would consider an issuer active, an active Goldman, Sachs account as opposed to some other firm's account, if we had handled their paper within the last three years, three or four years. That's what that number, I think, we're speaking to is. Not the number of issuers that we had outstanding average during 1969 or 1968.

Q What is the function of the commercial paper department?

A Well, I can speak in my own case.

My function at that time was to be responsible for everything that went on within the commercial paper department.

At that time the buying, the selling, the credit department, personnel decisions, salaries, everything.

Q What were your functions with respect to credit

review, your duties?

A My duties, as I believe I have testified yesterday, was to be the final decision person on all the issuers that we handled, both as to taking them on and as to any other aspects of deciding on credit matters relating to those issuers.

I relied very heavily on our credit department, Jack Vogel and his experts, and they reported through Jack Vogel to me.

Q For taking on and terminating an issuer?

A Yes.

Q And you relied on Mr. Vogel?

A Yes.

Q Do you remember situations where you decided not to go along with Mr. Vogel's recommendation?

A I can't think of an instance where I overruled Jack Vogel on his recommendation, on either taking on an account or on some decision where we decided that we would suggest the company rest in the paper market.

Q Practically speaking, Vogel's word was usually the final word?

A I was the final word.

Q As a matter of practice, quantifying it, 99 percent of the time you adopted his recommendation?

A I don't think that's a fair representation of the continual dialogue Jack Vogel and I had relating to the credit matters of all our issuers. It was constant questioning, probing and coming up with answers for me.

In fact, I even moved his desk so it would be right outside my office. I wanted very clear and constant access to him.

Q You wanted to be right on top of the credit situation?

A If I had something on my mind on a particular issuer, if it was a credit matter, I want his opinion and get him to do it.

Q Did you move his desk outside your office because the credit department was much further away?

A I can't tell you the exact timing of this, but the credit analysts were, I believe, on the sixth floor and I believe Jack was on the sixth floor with those analysts, and we didn't have room to bring them all down and I brought Jack down and left the analysts one floor above us. We have an inside stairway. They were accessible.

Q Did you have any experience as a credit analyst?

A In two respects: One, in terms of my advance accounting that I had at Columbia; more importantly what I would consider the on-job training that I had with

Harold Wass who was one of the partners before me and who trained me and who was a senior credit partner at Goldman, Sachs. I worked closely with him and learned as I was growing within the firm.

Q You worked closely with him in the credit department?

A I didn't have a title within the credit department, but I worked with him constantly, in those days hopefully to be the partner in charge of the paper department. Because of the age gap of Mr. Sachs, Mr. Anderson, Mr. Wass and myself, I thought I had a good opportunity and I tried to absorb as much as I could.

Q You weren't employed as a credit analyst?

A No, sir.

Q What were the original credit investigations in Penn Central other than as being the person to whom Mr. Vogel would report to ultimately?

A I believe I testified on this point yesterday, and my summary of what my testimony was yesterday, I had a great deal of first-hand knowledge of the management of both the Penn Central -- of both Pennsylvania management and New York Central management because we handled the New York Central commercial paper in the fall of '67, and we were having active discussions with the Pennsylvania Rail Road on

issuing commercial paper prior to the merger.

I then in March met with Dave Bevan, this is March of '69, where we were exploring the -- I think it was the first formal request I had gotten to handle the Penn Central paper and what would have to be done to get ready for that -- and I had my own judgment of that.

Up until the final decision, just before we took the paper on in August, August 1st or 2nd of 1969, I made the final decision a few days ahead of time, and I reviewed with Jack Vogel, as my normal practice would be, when we take a new account on, if there are any loose ends, any questions that I had, I might ask him, are you satisfied with everything you have learned and are we ready to go, that type of a request of him, and if I had specific questions, I would have gone into it.

So, that's the type of role that I played in this. Obviously I read the newspapers and I was aware of the hearings that had been going on with the ICC and the case being taken to the Supreme Court, I believe twice, and that type of thing.

Q Do you recall whether you made any specific inquiry concerning which of the Penn Central assets were encumbered?

A In the time frame now of '68, '69?

Q In connection with the credit investigation.

A Before taking it on?

Q Before taking it on.

A No, I do not.

Q Did you make a specific request after you took it on as to which assets were encumbered?

A Yes. There was a period in the spring of '74, where we went over with the railroad financial management specific items.

Q You meant the spring of '70?

A Excuse me, spring of '70, correct.

Q That would be in April approximately?

A I believe that's correct. And, I had seen the prospectus, as I say, for that financing in December of 1969, that spelled out a very large portion of assets, whether it was $600 million or more -- maybe it was $900 million or more of unpledged and unencumbered assets within the Pennsylvania Company.

Q Is that the Pennco offering debentures?

A It was a 50-million-dollar offering in December of '69 I believe.

Q You reviewed that document as to the encumberance of the asset and you spoke to the officials of Penn Central in the pring of '70?

A Yes.

Q Do you recall discussing the credit worthiness of Penn Central with Mr. Michael Evans?

A I can't remember any specific discussions that I had with him, the timing of it or what the topics would be. If Jack Vogel weren't around at a time that I wanted to know something, I very easily could have called Mike.

Q You don't recall?

A No.

Q Do you recall any such discussions concerning credit worthiness with Mr. Hoffman?

A I can't recall any specifics.

Q I believe in your direct examination you referred to a term "We Needs." I believe that was the information you wanted, that Goldman, Sachs wanted to review concerning an issue of commercial papers; is that correct?

A I do not think that is correct.

Q Tell me what "We Needs" are.

A "We Needs" are a list of very specific documents of information that we would need prior to handling the account. They certainly weren't the totality of the information that we would need. But, they would include such things as the authorization from the board of directors to issue paper, signature cards, copies of any revolving credit agreements, the previous year's high and low point of short-term

borrowing the issuer had, because we would put that in our yellow information sheet, a list of its principal commercial banks of deposit, and again that went on the yellow information sheet.

The "We Needs" was that specific type of information needed to satisfy ourselves that it was going to be a legal obligation, a legal note of the issuer, and to bring our yellow sheet up-to-date, but in no way was it a totality of the information that we need.

Q You say it could not be the totality?

A I would doubt it very much. I can't think of an instance where it would be.

Q I believe you indicated one of the types of the documents was that 300-million-dollar revolving credit agreement you referred to.

A Yes, but that wasn't in place at the time we took the account on. I believe it was a hundred-million-dollar revolving credit agreement at the time.

Q Do you recall specifically looking at the revolving credit agreement?

A No, sir. I don't view it as my function or task to look at the underlying documents.

Q Do you know if anyone in the credit department read the revolving credit agreement?

A I can't tell you with any certainty that any specific person reviewed it. But, I know from questions that I have asked of Jack Vogel that he had answers for me and the presumption is he got it from reading the revolver.

Q Did you ask Jack Vogel if he read the revolving credit agreement?

A I don't recall specifically asking that question.

Q Is it your testimony that you assume he did?

A Yes, because I would ask him questions regarding the revolver. I know I have asked questions regarding the revolver and got answers, so I assume he or somebody else read it.

Q What questions were they?

A The type of things that -- I can't tell you the specific questions that I asked. I can tell you the type of things that I am interested in knowing about a revolver.

Q Do you recall what questions you asked Mr. Vogel?

A Regarding this specific revolver?

Q Yes.

A No, I do not remember.

Q I believe on direct testimony you have indicated that you felt that 100 percent line coverage was important for commercial paper issuers. Any problem with that statement?

A Yes. I think the view that I had on a hundred percent line coverage is in terms of the investing accounts, arbitrary tests and one of them might be the hundred percent line coverage, and from that point of view line coverage is important to the investing account in his arbitrary test, but everybody in the paper market knows that bank lines are not contractual agreements that the bank has to honor. I didn't put the importance on it from a credit point of view.

Q Everybody but the investors seemed to know that; is that right, Mr. Wilson?

A I think there are many investors in the commercial paper market, particularly the commercial banks that buy commercial paper, know that a line of credit is not an obligation of that bank to supply funds to the issuer. Those lines could be pulled at a whim and very often the letters confirming those lines will state the terms and conditions under which the bank can withdraw the line.

I can't imagine any bank buying commercial paper would have the feeling that those lines were contractual agreements on the part of the various banks to back up the paper.

Q Did you ever send copies of these letter agreements to any investors?

A No.

Q You won't dispute the fact that you have indicated in your direct testimony and in your blue sheets that more and more investors were becoming concerned with bank line coverage; is that correct?

A In the tight money period we were going through in '69, '70, that is a correct statement.

Q That is the time frame we are dealing with, isn't it?

A That's correct.

Q What was the source of your understanding and knowledge that investors were increasingly more concerned with bank line coverage?

A Feedback from our salesmen.

Q People out there in touch with the investors?

A Correct.

Q Mr. Wilson, is it possible for you to quantify the time you spent in determining to take on a new issuer for Goldman, Sachs?

MR. MANEY: I object. Any issuer or average issuer?

THE COURT: If there is such a thing as an average. He can give us a range.

A It's very hard for me to quantify that.

Q A lot of time?

A It depends whether I got involved with meeting personally with financial officers or not. It would depend on whether Jack Vogel were out and away at the time and I might be substituting for him in receiving and processing some of the documents that came in.

I didn't get involved in the actual analysis and underlying work that went on in the credit department. I was expecting that to be done by the credit department, reported up through Jack Vogel to me.

Mine was an overview of the credit decisions, still having the final say but relying a great deal on Jack and his people.

Q In anticipation of my question to you, Mr. Maney asked you about the Continental Insurance Company. You said you had some familiarity prior to Goldman, Sachs or while you were at --

A Well, I came back in 1957 and I believe I handled that as an investing account probably in the late fifties.

Q And I believe you indicated you did not read Plaintiff's Exhibit 42, the memo.

A Yes.

Q And you did not take any steps to contact Continental, a phone call or whatever, to find out why they took that action.

A That is correct.

Q You sort of discounted them because they were a difficult account to sell to anyone?

A To me in having dealt with them, there was no rationale as to why -- the few names that were on there was GMAC, and I think a GE Credit and I think we got one of our names on the list, and there was no rationale or pattern.

Q You felt it would have been unproductive to make that phone call to them?

A I'm not sure I understand what --

Q You felt it would not have led to any additional information to you about Penn Central?

A Based on what I knew of the secretary-treasurer that handled the account, the answer is no.

Q Did there come a point in time when you learned of certain statements made by a Mr. Cox before the ICC?

A Yes.

THE COURT: Will you designate that time for me.

MR. ATLAS: In or about October, November 1969.

Your Honor, do you have a copy of these blue sheets?

THE COURT: Yes.

MR. ATLAS: It is Plaintiff's Exhibit 28.

It is the November 10th, 1969 blue sheet.

Q Do you have that in front of you?

A Yes, I do.

Q Do you recall that you became aware of these comments by Mr. Cox?

A Yes.

Q Did you make any effort to contact Mr. Cox?

A No, I did not.

Q Did you ask anyone else to contact Mr. Cox?

A No, I don't believe I did.

Q You felt that these comments would be harmful or might be harmful to the sale of commercial paper, correct?

A Yes, that is correct.

Q That's what you said in the blue sheet, right?

A Correct.

Q Is that the reason you brought it to Penn Central's attention?

A The reason I brought this to the Penn Central's attention, I believe, as part of this negotiation and trying to get John O'Herron to get more lines of credit to back up paper and start absorbing some of our costs that were eating into the spread, because we had been carrying so much inventory.

This was one more argument I was using to say John, if you will do this and get some more lines, I think it's going to help in the sale of your paper during this

very tight money market period and therefore this means Goldman, Sachs won't have to carry so much of your paper.

Q You were squeezing, and this is part of the plan to get him to do what you want him to do?

A Yes.

Q You testified on direct examination the two railroads, and I assume you are talking about the Pennsylvania and New York Central were the subject of considerable review by the ICC; is that correct?

A In November?

Q No, prior to the merger.

A Excuse me, I thought you were talking about --

Q You indicated there was considerable review that was involved in these two railroads.

A Correct.

Q In light of that knowledge that you had, don't you think these statements by Mr. Cox should have at least been followed up by you?

A No.

Q You felt there was no point in calling Mr. Cox?

A I didn't feel so. If I did, I would have asked somebody to do it. My feeling was that Cox was there to, at the ICC hearings of the proposed merger between the B&O and C&O, the Penn Central Company's case, they didn't really

want that merger to go through and he was saying, we're still having a rough time with our merger and don't make it worse for us, Mr. ICC.

Q That wasn't based upon a conversation with Mr. Cox.

A That is correct.

Q Did there come a point in time when you learned Brown Brothers Harriman had removed Penn Central from its list of issuers?

A Yes.

Q I direct your attention to page 12, which is the February 6, 1970 blue sheet.

THE COURT: Before that, what merger was he mentioning?

THE WITNESS: There was a merger discussion between the Baltimore & Ohio and Chesapeake & Ohio Rail Road, and that was the ICC hearing, and Penn Central was asked to present its case on the views of the merger.

Q You became aware Brown Brothers dropped Penn Central from its approved list?

A Correct.

Q Isn't it true Brown Brothers was acknowledged in the industry as having more than an average awareness of railroad operations, that they had a particular familiarity with railroad operations?

A They certainly had an historical relationship.

Q You were aware of that, weren't you?

A Yes. I know the Harriman name was associat with railroads and it was in the name of Brown Brothers Harriman and they had been instrumental in that firm.

Q Did you make any effort to contact anyone at Brown Brothers Harriman?

A I didn't but I instructed someone to.

Q Was that your decision?

A No. I think it was at the request of John O'Herron.

Q Mr. O'Herron asked you to contact them?

A Yes.

Q That wasn't for the purpose of finding out the reasons for Brown Brothers Harriman, was it?

A The reasons?

Q The reasons for them dropping Penn Central.

A John O'Herron wanted us to contact Brown Brothers Harriman to find out why.

Q Didn't he want you to contact Brown Brothers so you could set up a meeting for him?

A For that purpose.

Q What were the results of your attempts to set this meeting up for Mr. O'Herron?

A My recollection is, the officer on the trading

desk that dealt with our salesmen asked that such a meeting not take place because he didn't want to get in between a situation where he on the trading desk, and whatever the policies were at Brown Brothers Harriman regarding Penn Central, get caught in an argument between what the two positions might be.

Here is Brown Brothers Harriman who had a two-million-dollar line of credit to Penn Central, and then on the trading desk they're buying a paper for the account of customers and so on and they get off. I can understand his position.

Q So the situation with Brown Brothers sort of died without you getting any information as to their reasons, didn't it?

A That is correct.

Q Mr. Wilson, did Goldman, Sachs advise Penn Central to increase their bank lines on February 27, 1969?

A May I look at the blue sheet?

Q I direct your attention to Plaintiff's Exhibit 21.

A This is February 27, 1969?

Q Is that the blue sheet you have in front of you?

A Yes, P-21.

Q Yes, Plaintiff's Exhibit 21.

THE COURT: What is the question?

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Q Did Goldman, Sachs advise Penn Central to increase their bank lines on that date?

A It was a recommendation that we felt, we being Goldman, Sachs, they should increase their lines by 25 to $50 million.

Q Is the answer then yes?

A Yes.

Q Did Goldman, Sachs --

MR. MANEY: Objection, your Honor. He is asking about a document that is in evidence. We don't see --

THE COURT: The document was given to Mr. Wilson to refresh his recollection. Mr. Atlas is asking whether it happened. There is no argument what the blue sheet says.

MR. ATLAS: No, your Honor.

A Am I correct that the only thing I've been asked, did Goldman, Sachs recommend they increase their lines?

Q Yes.

A Yes.

Q Did Goldman, Sachs advise Penn Central to increase their bank lines on September 11, 1969, do you recall?

A It was a suggestion and a recommendation.

THE COURT: September when?

MR. ATLAS: September 11, 1969.

Q Is the answer to that question yes, Mr. Wilson?

THE COURT: The answer is it might have been.

Q Take a look at Plaintiff's Exhibit 20, which is misdated September 19, 1969.

THE COURT: The date is incorrect. It should be September 12th. It's on the first page of the booklet.

A It looks, if I am reading the proper section of this, that I asked if it were -- it says that I discussed the nuances of the commercial paper market, particularly the stronger emphasis of bank line coverages in the lines of investors.

"He asked if it were possible for Penn Central to get an additional $50 million in lines, and John said it was but he would prefer not to."

I'm sure the discussion was there and --

Q So the answer is yes?

A And I was telling him about the market and I thought they would be in a stronger position if they had more lines, yes.

Q So the answer is yes?

A Yes.

Q Did Goldman, Sachs advise Penn Central to increase their bank lines on November 10th, 1969? I refer you to Plaintiff's Exhibit 28.

A The quote that I wrote in my blue sheet that date

is "I advised him that may want to be thinking about getting another $50 million of standby lines."

Q Is the answer yes?

MR. MANEY: Your Honor, I object.

THE COURT: I'm more interested in what he says than a characterization of what he says. You can answer the question.

Q You don't dispute the November 10, 1969 blue sheet?

A No, sir.

Q Did Goldman, Sachs advise Penn Central to convert back-up lines to swing lines on December 1st, 1969?

A Yes, we did.

Q Did Goldman, Sachs advise Penn Central to increase the bank lines on December 9, 1969? That's Plaintiff's Exhibit 22.

THE COURT: What was the date you already agreed on?

MR. ATLAS: December 1st, 1969, and now it is December 9, 1969. That's Plaintiff's Exhibit 22.

A The quote, and this is a George Van Cleave blue sheet, I was away that day, and George Van Cleave quotes Jack Vogel now, "Brought up a subject of line coverage pointing out there are now investors that will not buy CP unless there is a hundred percent coverage and that although

we do not feel a hundred percent coverage is necessary, questions are being asked in this regard."

Q Did you receive that blue sheet?

A I was copied for it and I was told about the discussion, and I read the blue sheet.

Q You did read the blue sheet?

A Yes.

Q Did you ask Mr. Vogel any questions about that statement?

A In that I discussed knowing I was going to be away and I discussed with George Van Cleave and Jack Vogel what I wanted discussed at that meeting, and this is one of the things we wanted discussed.

Q Did Goldman, Sachs advise Penn Central to increase their bank lines both on February 5th and February 6th, 1970?

Plaintiff's Exhibits 11 and 12.

A Yes. Here I said, "The most important thing they could do is to get another hundred million dollars in standby lines to back up their commercial papers and some of these lines should be swing lines or demand lines."

Q Did Goldman, Sachs request of Penn Central on March 5th, 1970, as to what progress they were making in obtaining the Euro Dollar bank lines?

A Yes, I recall a discussion in that regard.

Q Did Goldman, Sachs advise Penn Central to increase their bank lines on March 23rd, 1970?

MR. MANEY: Objection, your Honor, irrelevant.

THE COURT: Postdate?

MR. MANLY: Yes, your Honor.

MR. ATLAS: Mr. Maney, your Honor, went --

THE COURT: I will allow it.

A I don't have a copy of it in front of me, but I feel sure that I did.

Q You did?

A Yes.

Q Mr. Wilson, you testified on direct examination I believe, as to the current transaction, current purposes test.

A Correct.

Q Was it your testimony there is no requirement that the fund be used for current purposes?

A My testimony was that the exemption for the Penn Central's commercial paper lay within Section 3-A-6, because it was regulated by the ICC, and not under the 3-A-3 exemption which has the current purpose language in that exemption.

THE COURT: I understand that that's your

understanding of the basis of the exemption.

Are you therefore saying that you understood that there was no legal requirement, and I emphasize "legal," that the proceeds of a railroad's commercial paper be used for its current needs?

THE WITNESS: That is correct, from a legal point of view, that is correct.

THE COURT: I still want to ask whether you believed that according to banking and lending practice, the proceeds of the commercial paper were ordinarily to be used by any business for its current needs.

THE WITNESS: Well, your Honor, the parallel in characteristics between a railroad and a utility were very similar. Namely, that there are a number of utilities that have a very slim working capital, or may not have a positive working capital.

THE COURT: You mean in these days?

THE WITNESS: Even in those days.

So, that's the reason we went down to the SEC to get this utility formula, so we could tie it in to the issuers, the utilities, dollar amount receivable of inventory.

I knew that, and in my own thinking it had many characteristics similar to those utilities, and we kept the paper less the dollar --

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THE COURT: You are now talking about Penn Central?

THE WITNESS: Yes.

Q Who is Mr. John Rhoades?

A John Rhoades was a general partner of Goldman, Sachs just prior to the time or about the time I became a general partner, he had had several heart attacks and was not well.

Q Wasn't it Mr. Rhoades from whom you received your on-the-job training?

A He was one of the gentlemen but there were others. John came from our Chicago office in, I believe, the mid-sixties.

Q Would you disagree with the following statement contained in Plaintiff's Exhibit 84:

"We provide for industrial commercial finance, transportation, agricultural and utility companies' short-term fund for current transactions under an exemption 3-A-3 from the prospectus and registration requirements of Section 5 of the Securities Act of 1933."

MR. MANEY: Objection, your Honor. Improper cross-examination.

THE COURT: In what respect?

MR. MANEY: He is asking you if he agrees with a statement by somebody else attributed to a different date,

without confronting the author of the document.

THE COURT: The question of what the significance of the opinion is -- why don't you just ask him if they did do those things.

MR. ATLAS: I believe the witness answered he relied on the Section 3-A-6 section.

THE COURT: Does that include railroads?

MR. ATLAS: Yes, it does.

MR. MANEY: Objection, your Honor. It doesn't say railroad.

MR. ATLAS: It says transportation.

MR. MANEY: That's not necessarily railroads.

MR. ATLAS: Let the witness explain it.

THE COURT: He says he was relying on 3-A-6.

What do you think of that statement?

THE WITNESS: Without seeing the context and the time frame and who gave the opinion to John Rhoades to write that, I am at a loss to explain it.

THE COURT: Without the --

THE WITNESS: Without the background.

Q The second page of that document, Mr. Wilson, number one, page 3 -- I'm sorry, number two, page 3, first sentence, Mr. Wilson.

A It's page 3 of this?

Q It is really the second page on the document.

THE COURT: Mr. Atlas, I really think this is a fairly futile avenue. Mr. Rhoades is dead. We can't figure out --

THE WITNESS: He is alive.

THE COURT: Excuse me, I thought he was dead. Whether he is alive or not, he is not here.

MR. ATLAS: Mr. Wilson got a copy of this memo.

THE COURT: What does it prove, that somebody else thought something else?

MR. ATLAS: I would like Mr. Wilson's understanding why there were different people relying on different exemptions.

THE COURT: If he can explain it.

THE WITNESS: Knowing John Rhoades and his thoroughness in this area, I am sure he had some other type of transportation company in mind than a railroad. There had only been, to my knowledge, the Chesapeake Corporation and the Santa Fe back in the fifties, that we had handled in railroad, and I'm sure he was thinking of some other type of carrier.

THE COURT: Does 3-A-3 apply to all the other types of corporations?

THE WITNESS: Section 3-A-2 would apply to the

commercial bank, which gives its letter of credit, which --

THE COURT: What I mean is, the other types of companies there, industrial, financial, agricultural and utility companies.

THE WITNESS: I believe that's correct and if there is any question, we go down and ask the SEC for a no action letter and if they think it is not within the current transaction test, that I will say so and we can't issue under the exemption.

Q Were you aware that the ICC had expressed any concern that the Penn Central was not using commercial paper for current purposes?

A If you are referring to the memorandum, opinion that ICC wrote in granting the 200-million-dollar increase for commercial -- I mean authorizing $200 million of commercial paper, in the fall of 1969, I was aware of that document and of their opinion, as I was aware of their statement in that opinion that they felt that the railroad was credit worthy.

Q Mr. Wilson, the question is, were you aware of their concern?

A I was --

Q You were aware of the concern Penn Central was using the commercial proceeds for other than current purposes?

A I was aware that they knew that the application ran for longer than 270 days. I think some of it ran a year; the approval of the lines to back it up and some went into the end of 1970 or even longer. The revolver was certainly longer. So, clearly the proceeds were being used for working capital purposes that were going to be rolled over longer --

THE COURT: Mr. Wilson, I really think you are not answering. The question is, apparently the ICC expressed a concern about this. Did you know that they expressed a concern?

THE WITNESS: I'm troubled on just what the concern was. You can have a lot of concerns.

THE COURT: It is fair enough to ask that, but when you find out, either you knew or you didn't.

THE WITNESS: If the concern you are referring to is in the second sentence of the first full paragraph on page 4 of this --

THE COURT: Plaintiff's Exhibit 88?

THE WITNESS: Plaintiff's 68, page 4, and I believe the concern you are referring to is the second sentence, "Although we are sympathetic with the applicant's problem, short-term financing has traditionally been relied upon to finance short-term needs and is not normally regarded as a

proper source for long-term financing of capital expenditures or refinancing of maturing long-term debt." I was aware of that.

Q Read on, please.

A "As of June 30th, 1969 applicant had a deficit working capital situation which can be expected to worsen if reliance on short-term financing is increased. The exhaustion of short-term credit to refinance that maturing long-term debt or to finance long-term capital expenditures could expose a carrier to serious crisis in the event of an economic squeeze, at which time a carrier may require short-term financing for traditional use. We are therefore concerned about the use of short-term financing for long-term purposes and feel that where necessary it should be resorted to cautiously."

Q Were you aware of that in September, October 1969?

A Yes, I was.

Q You stated in direct examination that it was your normal procedure to ask the issuer as to the use of its funds, correct?

A Yes.

Q And it was your responsibility, I understand, correct?

A Not necessarily. It could have been Jack Vogel's

or somebody else within the credit department.

Q Did you inquire of the Penn Central as to the use of their funds?

A I do not recall asking that question.

Q Were you aware that the accountants for the company and the management of the company themselves were treating certain commercial paper as long-term debt?

A Well, I think we're in an area of accounting practices and requirements. I know they were following ICC accounting, and there was commercial paper that appeared below the line, not in the current caption --

Q As long-term debt?

A Or an interim. I think there were three categories, as I remember, saying the -- I think there was an intermediate category. But, not as a current obligation.

Q Not as a current obligation.

It was being treated as such not only by the management of the company but also by Peat, Marwick & Mitchell?

A They had to under ICC accounting rules.

Q That is your understanding?

A Yes, and I am not clear that the totality of the paper was in that intermediate category.

Q Did you understand anyone at Goldman, Sachs

disagreed with that accounting treatment?

A I can't say specifically I did. I'm sure there has been a lot of professionals that have disagreed with the ICC accounting treatment. I know the SEC does right now.

Q Do you know anyone at Goldman, Sachs that expressed their disagreement with that treatment?

A Something in the back of my mind is telling me that I remember seeing this in some memorandum from our credit department or from one of the analysts.

Q From Mr. Evans?

A Possible. I don't have the file or document here.

Q Will you take a brief look at Plaintiff's Exhibit 39. Does that refresh your recollection that Mr. Evans so expressed that disagreement?

A Could you direct me to where it is so I don't have to read three pages?

Q Page 2, about the sixth line down.

A Yes; this memorandum of Michael Evans on June 2nd, 1969 states his opinion as an analyst that he had a question about how the $50 million of bank lines used to cover paper, how it was carried on the balance sheet.

Q As long-term debt due after one year?

A That's correct.

Q Were you aware of that document in or about June

of 1969?

THE COURT: Was he aware of what?

Q Were you aware of Plaintiff's Exhibit 39?

THE COURT: Of Evans' views?

MR. ATLAS: Yes.

A I believe so, yes.

Q Did you ask any questions of Penn Central as a result of that?

A No. I didn't think it was necessary for two reasons:

One, I knew that Penn Central was responsible and reporting to the ICC and responsible for filing their ICC accounting.

Two, that they had one of the major accounting firms, Peat, Marwick, that was auditing their statements and if Peat, Marwick didn't agree with them, I'm sure they would not have signed their auditor's statement which appeared in each annual report.

And, three, I know there were other issuers that had opinions from their accounting firms that it was -- I am talking about industrial firms now where the accounting profession has said it was all right to carry commercial paper as long-term debt when there was a back-up line facility, a revolver, where the commitment was longer than

one year.

So, I had no concern in this regard and I did not ask the company.

Q Did you tell Mr. Evans that?

A I don't remember.

Q Were you asked to give an opinion to Penn Central as to the additional issuance of 50 million in commercial paper in or about September 1969?

A Going from 150 to 200 million?

Q Correct.

A I believe the request or the views that were requested from me, did I think the commercial paper market could absorb it in that tight money market period, and if that's the opinion you are speaking of, yes, I rendered that opinion.

Q Did you have any doubt to this opinion?

A There isn't anything certain in this world and I could only judge from my own knowledge of the paper market. I felt it could be done. I thought there was a reasonably good success that we could do it even in the tight money market period where interest rates were continually rising.

Q At or about that time did you have any questions to ask of Penn Central concerning the cash flow?

THE COURT: When was this?

MR. ATLAS: September 1969.

Q If you don't recall, you can refer to the blue sheet dated September 3rd, 1969.

A The only matter that I recall -- the only matters I recall which would deal with cash flow at this time, were their request to go from 150 million of commercial paper borrowing to 200 million. That was $50 million to add to the cash flow, and I believe John O'Herron told us they were considering a financing.

Yes, they were considering a financing in the Pennsylvania Company with the proceeds being led upstream, and that would go to cash flow and need of the railroad. Those were two specifics.

Q Did you have a lot of questions about cash flow?

I refer you to the last line of your own blue sheet. "We have a lot of questions to ask about the merger, cash flow and the long-term financing."

Is that an overstatement?

A I was putting the September 3rd memo which I wrote, it was a phone conversation, and I was using this memorandum to alert Jack Vogel, his credit people that if you've got questions in this area of cash flow, of merger, long-term financing plans and so on, we're going to have this meeting and get your questions ready, because we hadn't had this

interfacing.

I know Peter Fisher had a few weeks earlier but I hadn't had it and I didn't think any of our credit people had. This was my way of alerting Jack Vogel and his credit people.

Q This wasn't even routed to Vogel.

A All commercial paper, blue sheets I wrote, Jack Vogel got a copy of, whether he was specifically put on it or not.

Q It wasn't routed to the credit analysts either, was it?

A I have explained the commercial paper department, Jack Vogel gets a copy of every blue sheet that I write relating to any one of our commercial paper issues. Has then and do now.

Q As well as the new business people?

A The four people indicated on this blue sheet were outside the commercial paper area.

Q Did you in fact ask all the questions you wanted as to cash flow at the meeting on September 11th?

A Excuse me, I don't understand the question. Did I ask Jack Vogel?

Q No.

I believe you testified on September 3rd you

indicated that you have a lot of questions to ask Penn Central regarding cash flow, among other things. Did you in fact ask those questions of Penn Central at the meeting on September 11, 1969?

A I do not recall any other questions other than what's in the blue sheet.

Q So if it is not in the blue sheet, you didn't ask the questions?

A I don't recall any other questions.

Q At the meeting on September 11, 1969 Mr. O'Herron told you that the cash position for the first quarter of 1970 would be very tight, correct?

A Correct.

Wait a minute now, very tight?

Q Can you answer the question without necessarily referring to the blue sheet?

A Would you ask the question again.

Q Did Mr. O'Herron tell you at the meeting on September 11, 1969 that the first quarter 1970 cash position would be tight?

A I believe that's correct.

Q And did you ask O'Herron any questions about that statement?

A No, I don't recall asking any questions specifically

other than what is recorded in this blue sheet.

Q Did you ask to see any documents in connection with that statement?

A No.

Q And you stated, I believe, on direct examination that you weren't concerned about the first quarter losses, correct?

A It's correct in the sense that when I learned what they were, got explanations for them, we have had that into the overall knowledge that I had about the family of companies, the earnings that they had in these other subsidiaries, the assets that I knew were available, in this railroad, it is a correct statement, I did not.

THE COURT: Let me ask a question, Mr. Wilson. There has been some testimony by some of your colleagues, and perhaps by yourself, which might leave the impression that the earnings of a company never have anything to do with its credit worthiness. I don't suppose anybody expects that extreme position to be accepted in all situations.

THE WITNESS: That's correct.

THE COURT: I take it what is meant when such phrases are used in this case, it means that in the total situation the loss in credit was not so serious in the judgment of the person making the determination as to affect

his attitude or as to make him, rather, think that the railroad could not meet its obligations as they arose.

THE WITNESS: That is correct.

Q Did you testify on direct examination that one of the major reasons why you weren't concerned about Mr. O'Herron's statement was because the first quarter of every railroad was traditionally tough?

A No, I don't believe I testified to that.

Q You didn't say the first quarter of each year is a particularly tough cash position?

A I believe what I testified to was, my knowledge of both the New York Central and the Pennsylvania Rail Road, shows that the first quarter of each calendar year was the worst quarter of any quarter in the calendar year.

THE COURT: Which might not necessarily be true --

THE WITNESS: It has to do with climatic conditions.

Q Was it or was it not one of the reasons which indicated that the statement should not be a credit --

A It was confirming something I already knew.

Q What about the second quarter? That I assume is April 1st to June 30th.

A My understanding of the earnings was that the third or fourth quarter would be the strongest. The first would be the worst, the second would be some improvement

and the third stronger.

Q Was this generally speaking for each year?

A I am talking about the Penn Central Rail Road.

THE COURT: For 1969?

THE WITNESS: Well, what's in the back of my mind is, I believe, a memorandum or a report that Mr. Keely of Goldman, Sachs wrote that also got into this question of the tightest cash period for the railroad, which would be in the first quarter.

I also remember that Dave Bevan had told me, as he looked ahead into 1970, that he felt there would be a stronger cash position in the latter part of the year. So, it is in this area that I am referring to now from my recollection.

Q When Mr. O'Herron told you on February 5th that not only the first quarter of 1970 but that the first six months of 1970 would be tight, did that have any credit significance to you?

MR. MANEY: I object. We seem to be flipping back and forth between cash and earnings.

MR. ATLAS: Tight cash position is what I am referring to.

MR. MANEY: I am getting totally confused. I thought there was a question of earnings.

THE COURT: The question now is when you heard that the first six months might be or had been --

Q When Mr. O'Herron told you in February 1970 that the first six months would be tight cash wise, did that have credit significance to you?

A No.

THE COURT: I'm puzzled when you say it didn't have any. Don't you mean it didn't have enough credit significance to change your judgment?

THE WITNESS: That's exactly right. What would be going on at this frame, if they were having a severe winter and so on, maybe --

THE COURT: If he told you he didn't have enough cash to pay the conductor on the train, you would have been a little worried, wouldn't you?

THE WITNESS: Absolutely. I have always viewed tight cash as not running out of cash or the capacity of not replenishing. I felt all through this period that they would have it.

Q It didn't encourage you to speak to Mr. Vogel about doing a credit check, did it?

A Credit check? I'm sorry, I don't understand.

Q You didn't ask Mr. Vogel as a result of that statement on February 5th by Mr. O'Herron to double check

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on the credit situation of Penn Central?

A I believe that as a result of what we learned on February 5th and 6th, that Jack Vogel and his credit people did review the credit worthiness of Penn Central as in my own mind I reviewed it.

Q On February 5th?

A As we were going through the discussions with the officers on the 5th and the 6th, yes, I was going through this all the time.

Q And Mr. Vogel was too?

A You would have to ask him what he did on that date.

THE COURT: Mr. Wilson, we haven't got Mr. Vogel here. We've got you here. What did you mean when you said you reviewed it in your own mind?

THE WITNESS: During the luncheon on February 6th, when I received the explanation as to why the fourth quarter earnings were not in the black, as I listened to the explanations as to what their forecasts were for the coming year, the year they're in, 1970, that they anticipated in the railroad itself a loss no greater than what they had had in 1969, and the consolidated profit showing an improvement from four million to 25 million, this was the type of information going through my mind, tied in with what I knew about the other assets and the capacity of this railroad to

either sell or take to banks or insurance companies and get more bank lines or take on more borrowing.

When I heard the story they were planning to do a hundred-million-dollar financing plus the 70 million of equipment trust financing, this was a rational plan that made sense to me and made me feel, as I heard it, they know where they're going this year, there will be an improvement in consolidated earnings and the company was credit worthy.

Q I believe you characterized, Mr. Wilson, the Penn Central officers as tough negotiators, correct?

A Yes.

Q Mr. O'Herron and Mr. Bevan?

A I dealt more with John O'Herron and I would say that's a correct assessment.

Q As I understand it the leverage they had with Goldman, Sachs is they could take their business elsewhere.

A Or they could stop selling paper. They could get a hundred-million-dollar bank lines and not sell any more.

Q You weren't afraid of it, were you?

A Afraid?

Q That didn't concern you that the Penn Central would --

A It didn't make economic sense to me.

Q You were more concerned with the fact that they

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would walk away with Goldman, Sachs?

A If I had pressed too hard and alienated them with the negotiation which had nothing to do with the credit analysis but just marketing the papers because we were picking up the cost which they didn't want to put the compensated -- yes, I think I could alienate them.

Q You didn't want to irritate them?

A No.

As I go throughout this time frame, I keep looking for something else I would have done, and I think I would have acted the same way I did.

Q Mr. Wilson, I believe you indicated in your direct examination that investors rely upon the Goldman, Sachs credit investigation.

Is that a fact?

A I think there are some investors in the marketplace that do rely on the fact that Goldman, Sachs is offering the paper because of our position in the marketplace, the fact we have a credit department and knowing that we review our credits. I think there are some people that buy paper on that basis.

Q Based upon your reputation also; is that correct?

A Very possible.

Q When you first learned of the 1969 paper losses,

I believe you indicated February 4, 1970, late in the day; is that correct?

A Correct. Losses and consolidated profits.

Q The financial information released that day, you learned late on the 4th?

A That's my recollection.

Q You indicate you didn't get a complete statement on the information or it was somewhat garbled.

A Correct.

Q Why didn't you just call Mr. O'Herron and ask him what the information was?

A Because I think it was at 5:15, 5:30, quarter of six. It was late in the day. It would be in the press the next morning.

Q This was a Wednesday, wasn't it?

A I can't tell you that. I don't know that.

Q It wasn't a Friday.

A I don't know that. We got a calendar, we can find out.

Q You thought it was too late in the day, five, 5:15, to call up O'Herron?

A I can't tell you with any certainty. Maybe I did try to call him and he wasn't there. I don't think I did. Maybe I had to leave to catch a train. I can't tell you the

reasoning as to why.

Q Aren't you sure that you didn't call Mr. O'Herron on February 4th, based on every document you have seen?

A I don't think I did. I think I probably would have recorded it in the blue sheet if I tried to reach him.

Q You testified you called Mr. Levy in St. Louis.

A Correct.

Q Why Mr. Levy?

A I believe I testified on this yesterday, namely, that Mr. Levy was the senior partner at Goldman, Sachs; he had the direct relationship with the chief financial officer, chairman of the finance committee, and that I wanted to inform him that there was going to be some write-offs, this 125-million-dollar write-off, I didn't know whether it was going to be charged to income statement or net worth, and I wanted to post him. This is the way our partnership works.

Q Why did he have to be made aware of it then?

A I call him all the time. I call him on lots of things in the commercial paper department. Or, something having to do with his accounts.

Q Why didn't you wait until the next day? He was coming back to New York.

A I didn't know he was coming back. I'm not even sure I knew he wasn't in the office until I tried to --

THE COURT: Did you call him from the office or your home?

THE WITNESS: I believe I tried to reach him in the office and I believe I learned from his secretary that he was in St. Louis and I found out where.

But, I can't tell you with any certainty.

Q Who is Henry Fowler?

THE COURT: I knew who Henry Fowler was before I came to the trial.

Q You know who --

A Yes, he was a general partner of mine. Former secretary-treasurer.

Q And you know Mr. Fowler knew Mr. Saunders very well?

A I'm not sure I knew of it at that time. I have subsequently known it.

Q Did you try to call Mr. Fowler?

A When?

Q On February 4th, when you learned of this news.

A No.

Q Did you know whether Mr. Fowler was in New York?

A No.

Q You also called James Hemphill in Chicago?

A The next morning I believe, yes.

Q The morning of the 5th?

A Correct.

Q That was before you called Mr. O'Herron; is that right?

A As I explained yesterday, the blue sheet doesn't help me out in recalling the sequence of phone calls and I can just assume that I probably talked with Mr. Hemphill before -- I can't tell you the sequence of the phone calls with any certainty.

Q The fourth quarter losses you learned of on February 4th and further learned in more detail on the 5th and 6th, did they cause you to reconsider your judgment of Mr. O'Herron?

A No, I don't believe so.

Q Were you surprised at this information with losses and write-offs?

A Yes, surprised in the sense that instead of being in the red in the fourth quarter in the transportation company, they were going to be in the black as he told me, if they were going to be in the red, I would have liked to hear it a few days earlier.

THE COURT: That's a different question. If he told you three days earlier, would you have been surprised at the content of the information?

THE WITNESS: I would have wanted to explore it further as we subsequently did on the 5th and 6th, and it did not become important to me in --

THE COURT: You must have been surprised at least in the sense that it was not what you had expected.

THE WITNESS: That's true.

Q Were you distrubed at this news?

A I was disturbed on February 4th because of the uncertainty of just where this write-off was coming, and the uncertainties of what it all meant and fit together.

THE COURT: Would you say you found the news on February 4th at least unsettling?

THE WITNESS: I would say that's a fair characterization.

Q Was Mr. Levy surprised and unsettled?

THE COURT: I don't know why you didn't ask Mr. Levy yesterday.

MR. ATLAS: Mr. Levy was asked yesterday.

THE COURT: Did he say anything to you that indicated surprise?

THE WITNESS: I think I recall him saying something like "That's a large number" or "large amount," something like that.

Q That was the extent of it?

THE COURT: Was this referring to the loss or --

THE WITNESS: I can't remember. I'm sure it was the write-off.

Q Was Mr. John Weinberg surprised and disturbed?

A I don't recall talking to John Weinberg at this specific time on the 4th and the 5th. I may have but I don't remember.

Q Was Jack Vogel surprised and disturbed?

A Well, I am going to use surprised and disturbed in the context I have answered the series of questions I have here.

I would think that Jack's reactions were, as I remember them, were the same as mine.

Q Jack Vogel's reactions were the same as yours?

A Yes.

Q And yet you still believed that Penn Central was credit worthy at this point in time?

A As we asked questions and found out what these numbers meant, and why their consolidated profit of $4 million, where the write-off was, what the forecast was for 1970, and we went through this information, that is correct, I felt the railroad was credit worthy.

THE COURT: As I understand your attitude or testimony, Mr. Wilson, in a sense you regarded the railroad

as credit worthy right up to the time when it filed, did you not?

THE WITNESS: I have felt that this management had the opportunities to take actions: Plan A, B, C, D, to replenish --

THE COURT: Up to the last day.

THE WITNESS: Yes, and it was quite a surprise to me the politicians in Washington had killed the guarantee, which ultimately forced reorganization because they ran out of time to do anything.

Q Did you want Mr. Levy to set up a meeting with Mr. Bevan for you?

A I believe that's correct.

Q Why didn't you just call Bevan yourself?

A Well, as I read over this bule sheet on the 6th, in preparation for this trial, I focused on the question for the first time, that I evidently was having John O'Herron coming down to see me the morning of the 6th. So, I am confused as to why that didn't take place and how we got into the luncheon on the same day instead of John coming down to my office.

I also know that my feeling throughout that morning of the 5th or 6th, was that I wanted to make sure we got not just John O'Herron, relatively new on the job,

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but we got the treasurer of finance coming. I'm sure if Gus called Bevan and said we would like to have lunch with you going over the figures, there was a greater success coming up that day.

Q If Mr. Levy --

A If he made the phone call rather than myself, yes.

Q Better chance of getting the information or greater chance of getting Mr. Bevan?

A The latter.

Q Plaintiff's Exhibit 12, which is the February 6, 1970 blue sheet, I believe you have testified on direct that contains your best recollection of what happened on that day. That's a complete and accurate reflection of the event; is that correct?

A That is correct.

Q You didn't bother to ask Mr. Bevan or Mr. O'Herron or remind them of the prediction it didn't come true for 1969, did you? That is, the fourth quarter prediction that Mr. O'Herron made.

A Well, he explained the fourth quarter.

Q Did you bring that to their attention on February 6th?

THE COURT: Did you say hey boys, remember you told us you were going to be in the black the last quarter?

MR. ATLAS: Yes.

A I can't remember whether that was said at that luncheon or whether they just volunteered to explain the figures, John had told me earlier in '69 that he thought it was going to be in the black.

Q Was that explanation reduced to a blue sheet?

A The explanation?

Q Of the failure of the fourth quarter '69 prediction.

A I believe it's in this February 6th memorandum.

THE COURT: I think Mr. Atlas is asking you about the explanation, are you not?

MR. ATLAS: Yes, your Honor.

A I believe that's in here.

Q Where would you find it?

A About ten lines down.

"Dave explained that they all anticipated the railroad would break even in the fourth quarter. In the last week of the quarter their accountants recommended a special six-million-dollar charge for self-insured equipment and an approximate ten-million-dollar extra charge for snow removal."

That was the explanation.

Q That they were surprised themselves?

A Their accountants, as I understood it, as they got

into the last few days of the calendar year or as the accountants were looking back from January into the fourth quarter saying that we think you ought to take a six-million-dollar charge and certain costs relate to snow removal --

THE COURT: They refer to unexpected charges against earnings, you are right, but they only account for 16 million out of 56 million. I am not criticizing --

THE WITNESS: I don't think there was a 56-million-dollar loss in the fourth quarter.

THE COURT: Excuse me, you are right.

Q Did Mr. Bevan or O'Herron say there would be a 56-million-dollar loss for 1970?

A They gave us two projections for 1970. As to the transportation losses, one was $56 million, and the other one was a management target which was less than 56 million. I think it was 25 or 30 million. It's in the blue sheet. They gave us two projections for estimates for the year 1970.

Q Was it your testimony yesterday on direct that the selection of the 56-million-dollar figure was on the basis of Mr. Bevan's statement that we shouldn't do any worse in 1970 than we did in 1969?

A I can't tell you it was based --

Q Is that the reason that --

A I think he specifically said, their forecasts show

that it would be 56 million. It happened to be the same number as the previous year's operating, railroad operating losses, but I think he used the number 56 million.

THE COURT: Independently arrived at you mean?

THE WITNESS: I believe so.

THE COURT: Somebody testified, either you or Mr. Levy, that there was a record that the losses would be no greater than the prior year, and the prior year was 56 million.

Q Did you or anyone else on behalf of Goldman, Sachs at this meeting ask Bevan or O'Herron whether they had been denied bank lines by any bank?

A No, I don't believe that question was asked.

Q Mr. Wilson, isn't it true that as of March 5th, 1970 Goldman, Sachs and you knew that Penn Central could not attain domestic bank lines?

A I did not know that.

Q You did not know that?

A No, sir.

Q Wasn't that the whole reason why you were urging them to get the Euro Dollar bank lines?

A No. I do not think that is a correct statement.

Q Were you aware that they really weren't making much of an effort to find out about the Euro Dollar bank

lines?

A I offered to put them in touch with one of my friends and they never followed up. I don't think that's an awful lot of effort, no.

Q It is not a lot of effort, is it?

A No, I agree.

Q If you had requested documents, you or Mr. Levy or Mr. Fowler or anyone else at Goldman, Sachs, had requested documents from Bevan and O'Herron, would they have refused to give them to you?

MR. MANEY: Objection, your Honor. There is no identification as to documents. Whether a train schedule --

THE COURT: Will you be more specific.

Q If anyone had requested Bevan or O'Herron to provide financial budget documents they were referring to in early 1970, would they have refused to provide you with those documents?

A Would they have refused?

Q Yes.

A At that time, I don't know whether they would have or not because I didn't ask for them. I didn't think there was any need to ask for them. I was talking to the chairman of the finance committee --

THE COURT: Let me ask this: Did you ever have

any reason to believe in the course of your dealings with Penn Central that if you asked them for any document or material, reasonably necessary for purposes that you were responsible for, that they would refuse to give it to you?

THE WITNESS: I do not believe so, no.

Q Mr. Wilson, you made reference in your direct testimony to a 100-million-dollar bond offering that the Penn Central Company, the holding company had anticipated in the late winter, early spring of 1970; is that correct, that this was an item of information given to you by Bevan and O'Herron; is that correct?

A Yes. There were two bond offerings discussed.

Q A 100-million-dollar bond offering?

A That is correct.

Q By the holding company.

A That is correct.

Q Did the holding company go into bankruptcy?

A I'm not clear on this. I don't know whether they have gone into reorganization or not. I don't think so, but possibly. I don't know.

THE COURT: Are you interested in his knowledge or the facts? The facts I can take judicial knowledge of.

MR. ATLAS: I am interested in his knowledge, your Honor.

A I do not believe the holding company went into reorganization in June of '70.

Q As of June 21st, 1970.

A I don't believe it did. It could have but I don't remember.

THE COURT: Is the holding company the subsidiary or --

THE WITNESS: It's the parent company and it owned at that time, I think, two or three smaller companies that they had acquired and owned all the stock in the transportation company.

Q Were the assets of the holding company made available to the commercial paper holders?

THE COURT: Are you asking whether he knows it?

MR. ATLAS: If he knows.

THE COURT: Are you testing his knowledge or are you trying to bring before me what happened?

MR. ATLAS: Whether he knows.

A I do not know.

THE COURT: What is the relevance of Mr. Wilson's knowledge?

MR. ATLAS: There has been repeated testimony, your Honor, by Mr. Wilson and others that the holding company assets, the enormity of the assets that were available and

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when push comes to shove and the commercial paper holders are left with their notes, they're not made available --

THE COURT: That's a good argument perhaps to me, but the question of what he knows in June, July or August isn't what counts. What counts is what happened.

Q Mr. Wilson, did you understand that the assets of the holding company could be made available to the commercial paper holders or would be made available? Would be made available.

MR. MANEY: Your Honor, I am confused by this line of questioning. I don't --

MR. ATLAS: I withdraw the question.

Q Mr. Wilson, do you know whether Goldman, Sachs disclosed to any investors the lack of the 100 percent bank line coverage?

A I can't answer that with any certainty because it's the -- the only way to get at that question is whether an investor would ask a salesman and --

Q The question is, do you know.

THE COURT: He probably doesn't know because he speaks to the salesmen --

A I can't tell you with any certainty that I know, correct.

THE COURT: Am I correct in understanding you to

say that unless an investor asked a salesman about that point, the investor would not be voluntarily advised or advised? In other words, it wasn't a practice.

THE WITNESS: That's right, and the salesman could easily find out from the credit department or the man that bought the paper and the guys buying the paper would sit alongside of them and all they have to do is yell over and ask.

The salesman did know for those investing accounts that had an arbitrary test that they had a hundred percent line coverage and it's up to the salesman that he wasn't offering paper to that account that did not have a hundred percent line coverage.

Q You indicated the final authority as to whether to take on an issuer or term one.

A Correct.

Q May I ask you whether in April 1970 you recommended or suggested to Gus Levy that you stop selling commercial Penn Central paper.

A I think the answer to that is in the relationship that I had between myself and Mr. Levy as my senior partner in writing this memo up after the fact, that I was writing it up in a very broad way.

I had in fact, that morning and before I went down

to see him, had said we're stopping selling paper and I think we even unwound a trade we had already done and then I proceeded to go down to talk --

Q But you wrote the blue sheet to mollify the fact of the decision.

A The thing that has fascinated me through these trials is the importance plaintiff's counsel put on the words in some of these blue sheets, and I --

THE COURT: What exhibit is this?

MR. ATLAS: The April 14, 1970 blue sheet. I think it's Exhibit 15.

THE COURT: That is not in the book, is it?

MR. ATLAS: No, it's not in the book, your Honor.

THE COURT: May I see what you are referring to.

MR. ATLAS: Yes. It's Plaintiff's Exhibit 15.

THE COURT: Mr. Wilson's testimony is not entirely clear to me without me seeing this. I'm sure I have seen it before.

Yes, I do recall that. I'm not quite clear how you are trying to qualify this blue sheet.

THE WITNESS: All I am testifying on this point is that I had taken an action prior to us talking with Gus Levy, and there is an inference in the word "recommending" that I went down with an idea to be talked out and reviewed and

discussed and so forth. I had gone down with an action having been taken. It's a bad choice of words in that context as I wrote up --

THE COURT: I didn't realize that is what you were thinking nor do I necessarily agree that that is the important word.

To me, and maybe to Mr. Atlas, is the question why you take action or recommend on that day, that you should stop offering the notes.

Is that your question?

MR. ATLAS: In part. There is another aspect, your Honor, I want to pursue.

THE WITNESS: The question as to why, the discussion I had with John O'Herron where he was putting me on notice that the losses will be lousy, they will be staggering.

So, the first time, in my mental calculation of the first quarter losses, I had even gotten, even a hint maybe that they were going to be out of line with what they had told us back in February that the whole year, even though a quarter might be worse than they had anticipated, but the whole year was going to be in their projection, and the word staggering was enough to me to say, wait a minute, we got to stop selling paper, we have to find out what's behind this and dig deeper into this, and I did stop selling

paper on that day until I could clarify the situation.

THE COURT: How long was that before?

THE WITNESS: The purpose going down to Mr. Levy again was to ask that he arrange an appointment with Dave Bevan that day, and in fact I would have gone out right that morning if he was available, with he and John O'Herron and it was that evening as it turned out to be, the meeting was set up.

So, as a result of that meeting we had with them, I believe it was the evening of the 14th, we satisfied ourselves as to what importance was attached to this word "staggering."

Q Mr. Levy arranged for this meeting again, did he not?

A Yes.

Q And then you did commence selling commercial paper after that, didn't you?

A That is correct.

THE COURT: Mr. Atlas, I'm afraid I have to break now unless the remainder of your questions will only be a couple of minutes or something like that.

MR. ATLAS: I think I can condense it to a half an hour.

THE COURT: I will be back promptly at two.

(Luncheon recess.)

AFTERNOON SESSION

2 p.m.

ROBERT G. WILSON, resumed.

CROSS-EXAMINATION CONT'D

BY MR. ATLAS:

Q Mr. Wilson, I believe on direct examination you testified you were directed to read the green sheets to the investors.

A To read from it.

Q Would you take a look at Plaintiff's Exhibit 46 and see if you can identify that as the green sheet you referred to.

A I believe it is.

THE COURT: What is the date of this?

THE WITNESS: It's on the last page. April 22nd, 1970.

Q That is the green sheet from which you requested the salesmen to read to investors?

A It isn't the green sheet, yes, but over here, that would be it.

THE COURT: It is or isn't the green sheet?

THE WITNESS: The one I have in front of me is not green but it's a copy of our green sheet.

MR. ATLAS: Your Honor, this much of the document

is not in evidence and I would offer it in evidence at this point in time.

MR. MANEY: Objection, your Honor, as the ground previously asserted as to which the Court sustained the objection. There is no connection.

THE COURT: I am not sure of the argument that appeared previously, at the present time. At the present time it seems to me reasonable for the plaintiff to put before the witness material which Mr. Wilson considered to be relevant in April and try to relate what happened before that. You can point out it wasn't related.

Indeed in my mind the relationship would depend on the extent at which events had altered between the 13th of March and April 22nd, as well as the extent to which information had been made available which was not otherwise available between the 13th of March and April 22nd.

But, recognizing that it may be of limited probative value, I will allow those observations.

Mr. Atlas, I will consider in my brief, my decision those portions of the green sheet which Mr. Wilson identifies as being the material which he asks salesmen to read.

I don't suppose they were asked to read it verbatim.

Q Can you tell us which portions of Plaintiff's Exhibit 46 were requested to be read to investors?

A I did not review this in preparation for this trial. In fact I haven't seen it for sometime.

THE COURT: Can you remember independently of this green sheet what you told the salesmen what kind of information you told the salesmen to give to investors, the category?

THE WITNESS: What I believe what I wanted to get at, to make sure if an investor called and had Penn Central on their approved list or wanted to buy some, that they were aware of the press release that had come out. If they hadn't seen it in the Journal or the Times, that they were aware of the news that was known at the time.

One way they could have done it was, were you aware of it and if they weren't, well, we'll send it to you.

THE COURT: When you say aware of it, you mean aware of the news release, whatever it included?

THE WITNESS: Yes, any news release that came from this press release. This is a verbatim copy of the press release the railroad sent to us.

THE COURT: Including the consolidated income statement?

THE WITNESS: I believe that's correct.

THE COURT: Then it can only be admitted, I think, for what it's worth proven to be.

Do you have the original exhibit so it can be

marked?

MR. ATLAS: That was the exhibit we had in our file, your Honor.

THE COURT: Is that the one that is tagged?

MR. ATLAS: No, they were the subject of the in-chamber conference. I think we decided they were deemed marked.

xxx (Plaintiff's Exhibit 46 received in evidence.)

Q Mr. Wilson, I would like you to take a look at Defendant's Exhibit BN.

I believe you testified on direct examination that there were certain issuers that there was going to be a guideline or limit set up for purposes of their inventory, and I ask you, is that memorandum, Defendant's Exhibit BN, does that refer to the subject of your testimony at that time?

A Yes, it does.

Q Were these limits in fact adopted at or about that time?

A These -- my recollection is yes, we adopted these as guidelines to follow.

Q Did you in fact follow them subsequent to December 1st, 1969?

A I can't answer that with any certainty because, as I am sure, with an internal approach like this, that if we felt an exception had to be made on any name, we could have gone ahead. There was a ceiling of $5 million, and we could have gone to six million.

THE COURT: You said guidelines, and by definition I think that always has some degree of flexibility.

THE WITNESS: I think we had that. I don't think anybody would come back to us and say well, we had a memorandum on December 1st, 1969, and you told us that you wouldn't go over three million or $5 million. If we went over by 500,000 or so --

THE COURT: I understand that and would expect that, but I took Mr. Atlas' question maybe incorrectly and I will find out, to have a different thrust, that is, not did you go over it occasionally but in general did you observe the guidelines.

Q Did you observe them --

THE COURT: As guidelines. In his testimony he said guidelines.

Tell us to what extent you observed them.

THE WITNESS: My recollection is we followed them subsequent to this period of December 1st, 1969 and for how long, I can't tell you. My supposition would be when our

inventory started daily to be under the total selling of $250 million, we got down to 150 million, whatever.

Q You indicated in your direct examination, there were numerous references to the tight money market. When did this tight money market begin?

A Well, I think if we were to take out a table or a graph and look at a representative short-term interest rate, it probably would have started in the fall of 1966, when the Federal Reserve began to tighten up credit. I think it went on for a year, eased up a bit and then became more severe, certainly in '68 and '69. The toughest period, the period of most strain was December of 1969, in my recollection.

Q It is fair to say then the tight money market totally encompassed the period in question in this lawsuit.

A Yes, in terms of short-term interest rates I think that's right. I think the bond market, the severest period was in May of '70. In terms of pressure of the short-term money market was December '69.

Q I would like you to take a look at Plaintiff's Exhibit 67.

Have you ever seen that document before?

A I do not believe that I have ever seen this document before.

Q This was a document filed with the ICC; is that

correct?

A That's what it indicates.

THE COURT: Why do you ask the witness if he hasn't seen it before what it is? You know more about that than he does.

I will take judicial notice of it. There is no problem, unless there is a dispute about it.

Q You don't recall ever having seen it? Is that your testimony?

A It's possible but I don't think so.

Q Mr. Wilson, I direct your attention to Plaintiff's Exhibit 33, which I believe is in your booklet, the booklet of blue sheets. I believe it's the October 22nd, 1969 blue sheet that you prepared.

A Yes.

Q What did Mr. O'Herron mean by the word "with a good improvement"?

MR. MANEY: I object, your Honor.

THE COURT: Sustained. If you want to ask what he understood O'Herron to mean, that's one thing.

MR. ATLAS: I will adopt that suggestion, your Honor.

A My understanding of what O'Herron was telling me was that the fourth quarter was going to be in the black,

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and it was going to be a good improvement over the previous third quarter.

THE COURT: You mean over the previous quarter?

THE WITNESS: The previous quarter, right.

Q Also in your direct examination and earlier also on cross you referred to learning on February 4th of the 1969 fourth quarter, correct?

A Yes.

Q Which reflected a 16-million-dollar some odd loss; is that correct?

A I don't know the amount.

THE COURT: It signified it was unexpected charges.

Q Is that what it was, they were unexpected charges?

A When that came up at the lunch, February 6th, I got the numbers.

Q Why don't you refer to Plaintiff's Exhibit 12 in the booklet.

A Could you tell me --

Q February 6, 1970.

A I have it. And the question is what, sir?

Q What did Mr. Bevan tell you about the fourth quarter losses?

MR. MANEY: I object. This has been covered already on cross.

THE COURT: It has.

Are you looking for what's in the memo?

MR. ATLAS: No, your Honor. I am going to go beyond that.

THE COURT: We have already been this far. I don't mind catching up, refreshing our own recollection.

Q You indicated earlier on cross-examination, Mr. Wilson, that Mr. Bevan attempted to explain the surprise of the fourth quarter losses, correct?

A My recollection is that Dave Bevan explained that they all anticipated the railroad would break even in the fourth quarter, and he went on to explain why that didn't happen by the explanation: The snow removal of ten million and self-insured charge on equipment of six million.

Q What is a snow removal charge, Mr. Wilson?

A My understanding of that would be, if you have a severe snowstorm on your long line tracks, that you have an awful lot of costs related to it. It could be the number of people that you put on overtime, it could be the number of trains, engines that you have to take off other runs and so on, to remove it. And, what it meant to me, either themselves or the accountants were saying, there are certain costs there that we can specifically identify with those snow removal operations and you ought to have them as a

charge in the fourth quarter.

Q Did you ask O'Herron or Bevan as to why they didn't have the charge in their sheets or books originally?

A I don't think they knew when they made up their fourth quarter projections they were going to have severe snowstorms, on whatever days they had them.

THE COURT: I don't follow you. What do you mean by books originally?

MR. ATLAS: The blue sheet indicates that was something Penn Central was advised to do by the accountant.

THE COURT: I take it they were advised that their costs of removing snow had exceeded by what was budgeted, by $10 million. Just as happens with a city or town or anybody else.

MR. ATLAS: My question is whether he asked Bevan or O'Herron why it took the accountants to discover that.

THE WITNESS: No, I didn't because --

THE COURT: I don't find any information that it took the accountants to discover it. As I understand it, they told Mr. Bevan that much cost should be charged to it.

I assume the railroad engineers discovered the snow for example. I don't mean to be facetious. If there is any question as to how these things happened, I would like it explored but on the basis of my own experience, and

I have had a little experience with it, since I was town council for the town I live in and we have a municipal budget which required the determination of how much we should budget for snow removal, sometimes the weather fools you as it does with the City of New York, as I take judicial notice.

Counsel for the plaintiff may disagree with my analysis and if you do, I invite you to explore it further, but it's only fair to you to let you know that's the way I react to the testimony and evidence in the record.

MR. ATLAS: I will concede my meaning might be inaccurate, but it is that a charge was incurred in connection with the snow removal and that it is entirely conceivable that Penn Central and the accountants differed as to the accounting procedure with the internal controller, or whoever, at Penn Central.

I am asking Mr. Wilson as a reasonable man whether he inquired of Bevan and O'Herron whether that was the case or whether he inquired of Peat, Marwick & Mitchell why this had not been discovered earlier.

THE COURT: Your question includes an assumption which I don't know is accurate. And that is why it has not been discovered earlier. It implies there is a discovery and could have been known earlier.

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The reaction I have is, when the accountants came down and sat down to figure out how to describe the costs of the events in the prior quarter, they reviewed the snow thing and found that out of the total costs expended by the railroad, $10 million should properly be allocated to snow removal.

However, since you and I shouldn't argue about it, if it is an argument, because it seems to me we would both agree that the important thing is what Mr. Wilson took the statement of Mr. Bevan to mean and what he did about it.

If you would ask the question what he did about it rather than including any suggestion as to what he should have done about it, I would be perfectly glad to have the answer.

Q Mr. Wilson, did you inquire of Bevan and O'Herron as to the reasons for that charge being incurred?

A No, I did not because I thought it was being explained to me at this luncheon.

Q Did you make inquiry of Peat, Marwick & Mitchell as to reasons for those special charges in December of '69?

MR. MANEY: Objection, your Honor, it assumes facts not in evidence; it's not whether they're internal accountants or outside auditors.

THE COURT: Well, the accountants, whoever they

were. I take it the answer is no.

A No, I did not because I relied on what the chief financial officer was telling me.

Q You made reference to Mr. Babitch of the First National City Bank, certain actions he took, that gave you comfort. Did you know that Mr. Babitch of the First National City Bank had bowed out and declined to participate in a bridge loan, in February of 1970?

MR. MANEY: Your Honor, may I have a continuing objection to a fact not in evidence. I specifically renew it with respect to this question which is not clearly in evidence.

THE COURT: You do have such objection. Do you intend to establish that such is the case?

MR. ATLAS: Yes, we do, your Honor.

THE WITNESS: Should I answer the question?

THE COURT: Yes.

A At the time up until March 16, I did not know that First National City Bank was not part of that bridge loan.

Q Turn your attention to the November 5th, 1970 blue sheet, Plaintiff's Exhibit 11.

Could you tell me why that particular blue sheet was marked "Confidential"?

A Excuse me, November 5th --

Q I'm sorry, February 5th.

The February 5th, 1970 blue sheet, do you know why that was marked "Confidential"?

A I think I do.

Q Will you tell the Court.

A I think it was my secretary that typed it on. I'm not sure whether I told her to or not. I very easily could have. And, my reasoning was until I found out more about the matters I discussed with John O'Herron, I wanted her or any reader that I was circulating this to, which appears on the next page, not to leave it lying on top of the desk so if somebody is going by could look at it.

THE COURT: What exhibit is that?

MR. ATLAS: Plaintiff's Exhibit 11, your Honor, the February 5th blue sheet.

Q Assuming you had instructed your secretary to do that, that would have been the reason?

A Yes.

Q Would you identify a Michael Armellino.

A Is it in this blue sheet?

Q No.

A He was an analyst, security analyst in our research department.

Q He was a securities analyst in what department?

A Research department, in Goldman, Sachs research department.

Q Is that part of the commercial paper department?

A No. What the research department does is to analyze companies from an equity point of view, to determine for the clients of Goldman, Sachs whether they would recommend that the stock of a particular company is undervalued or overvalued, whether they should buy it or sell it. That's what he would do.

Q Does he have access to the credit department files?

A The only way that he would have access to our credit file would be if he cleared it with the partner in charge in his area, Bob Danforth.

Q You made reference to the Pennco offering in December, a 50-million-dollar debenture offering.

A December '69, yes.

Q Do you know what the purpose was for the raising of those funds?

A Yes, I do.

Q Would you tell us.

A It was to buy certain assets from the transportation company so that the fund from the proceeds of the fund from the financing could be lent upstream to the railroad.

THE COURT: This is the sales securities by the subsidiary?

THE WITNESS: The Pennsylvania Company, wholly owned subsidiary of Transportation. They did a 50-million-dollar financing, got the proceeds in Pennsylvania Company, bought assets in the Transportation Company and that's the way the management got money up into the railroad.

Q Do you know what the railroad company was going to do with those funds?

A I do not know the specific purpose or purposes for those proceeds.

Q Do you know what in fact the railroad company did with those funds?

A I think I do, but I can't tell you with any certainty.

Q What is your recollection?

A My recollection would be that while they were still operating in red ink in this merged railroad, that these proceeds were being used up in the railroad for marking capital purposes until such time as they were going to turn these losses in the Transportation Company around which they were forecasting in 1970.

Q Did you have any knowledge that those funds were used to buy back the inventory in December of '69 from

Goldman, Sachs?

A I believe that is correct, and I think --

THE COURT: Wait a minute. I think the question is what knowledge you have, not whether it is correct.

MR. ATLAS: Maybe we can consolidate the two at this point.

A My recollection is that the Pennsylvania Company did buy some commercial paper from Goldman, Sachs, in fact bought some of the inventory back from us temporarily for a few-day period until the fund ultimately got up into the Transportation Company. That is correct.

Q Ultimately the funds were used to take the inventory out of Goldman, Sachs?

A Not ultimately. It was an interim step.

THE COURT: You mean when they got the money --

THE WITNESS: Say they got the proceeds on December 24th or 25th from the financing. Instead of immediately buying the assets from the Transportation Company and paying for them in $50 million right then and there, I think --

THE COURT: The Pennsylvania Company bought them, not the Transportation?

THE WITNESS: The Pennsylvania Company, I believe, bought -- I believe the Pennsylvania Company bought the

inventory. I could be wrong on this. It's all in the records who bought back --

THE COURT: Whatever happened, you knew it was happening at the time?

THE WITNESS: I was aware we were selling back some of our inventory, $50 million, whatever it was, in December from the use of the proceeds of the financing until the railroad could ultimately use the money.

Whether it was done in Pennsylvania Company or it was transferred already to Transportation and Transportation bought back 50 million, that's not clear to me.

Q Were those funds also used to buy commercial paper of other issuers?

A I really don't know the answer to that one.

Q The dealer-issuer relationship between Penn Central and Goldman, Sachs, is that reduced to writing?

A No, sir.

Q Did either of the parties, the dealer or issuer, have the right to terminate that relationship?

THE COURT: At will?

Q At will.

A Yes.

Q So there would be no obligation on Goldman, Sachs' part after February 6th to continue selling the paper?

A Only the fact that we wanted to.

Q I believe you testified just before the luncheon break on cross that the treatment of the long-term debt was because of certain ICC requirements or regulations.

A That is correct. ICC accounting regulations.

THE COURT: You understood it was a requirement to account for the debt that way or was it a way that was approved?

THE WITNESS: My understanding was, this was specific ICC accounting treatment. Now, I could be wrong on that, but that was my understanding.

Q Because of the ICC --

A Accounting treatment.

Q In a moment I would like you to take a look at Plaintiff's Exhibit 39.

The first paragraph on page 2, specifically, starting with "As a result."

You can stop at the parenthetical remark.

Have you read that?

A I have.

Q Isn't it a fact from this document, Mr. Wilson, that the reason it was being carried as long-term debt was because of the existence of the bank lines? Isn't that the way management treated it?

THE COURT: I understood the ICC rule was if you had commercial paper backed up by bank lines, you could handle it as if it were long-term debt.

MR. ATLAS: I don't think that's what the witness testified to.

A Are you asking me what I testified to earlier?

Q What was the ICC requirement?

THE COURT: As you understood it.

A My understanding was that if a railroad had a revolving credit agreement that had a contract maturity date longer than one year, which clearly they had in this revolving credit agreement because it ran for three or four years plus a term feature could be extended at the end of it for another three or four years -- it was a seven-year original document. They also had these $50 million back-up lines which to my understanding it was not year to year lines to be reviewed by the banks to decide whether they will renew them again, but they ran for over a year and based on the umbrella, if you will, the ICC had them carry it as longer-term debt and not as a current item.

Q Because of the existence of those bank lines?

A Because of the term of those bank lines.

Q Mr. Wilson, if another commercial paper dealer had taken over Penn Central accounts from Goldman, Sachs, would

that have been announced in the trade papers or newspapers?

A I'm not sure what the trade press is for this.

Q Wall Street Journal, the New York Times.

A No, I can't think of any companies who started with one dealer who went to another dealer for whatever reason, that it would be a newsworthy item.

Q If a company the size of Penn Central had switched dealers, wouldn't be newsworthy?

A I wouldn't think so.

THE COURT: Any more than you switch lawyers?

THE WITNESS: No.

MR. ATLAS: No further questions, your Honor.

THE COURT: Thank you for winding up so efficiently.

REDIRECT EXAMINATION

BY MR. MANEY:

Q Mr. Wilson, let me show you Exhibit Y for identification. Do you recall having seen that article on or about January 9, 1970?

A I can't say with any certainty as I sit here now that I did.

Q Prior to February 6, 1970, were you generally aware of the impact of the winter on Penn Central?

A Yes. I was aware it was a very tough one. I think there were articles I read and I had known about in

the press at the time, yes.

Q You testified this morning about the question of asking the Penn Central officers for documentary support of the statements they made to you. Do you remember that testimony?

A Yes.

The feeling that I had, I was talking to the senior financial officers, but I really didn't have any need to ask for these back-up documents.

Q I would ask you for your judgment as to whether certain documents would have been furnished had you asked. I take it you didn't ask.

A What document are you referring to?

Q Let me show you Exhibit AA for identification, a document which will be offered into evidence through other testimony.

Do you have any judgment as to whether a document in the form of Exhibit AA for identification would have been furnished to you had you requested it?

A I can't read the title of this. My copy --

Q "Source and Application of Funds."

THE COURT: Is that a Penn Central document?

MR. MANEY: Penn Central document, your Honor.

A Is it January or February? I can't read the date

here.

Q The date is January 28, 1970.

MR. ATLAS: Your Honor, it's not on the face of the document we have.

THE COURT: The date?

MR. ATLAS: The date.

THE COURT: Do you agree to that date or --

MR. ATLAS: I just don't know.

THE COURT: I thought your associate indicated it was January 28th.

MR. MANEY: My associate did, your Honor. I am not offering it through this witness, your Honor.

THE COURT: Will you be able to establish the date when you do?

MR. MANEY: Yes, your Honor.

A I don't have the question in mind now.

THE COURT: The question is whether if you had asked for it, you think you would have gotten it.

Q Not necessarily this particular document, but a document in the form of Exhibit AA for identification.

A I have no reason to believe that if I had asked for this source and uses of funds that showed a financial plan for '70, I have no reason to believe that I would not have received it.

Q Let me show you Exhibits --

A I didn't ask, so I don't know.

THE COURT: The plaintiff's theory is, we might not be here if you had asked.

THE WITNESS: Well, if I had gotten it, the net income shows the 56-million-dollar loss they told me about a few days later.

Q Mr. Wilson, let me show you Exhibits PX-101, 102 and 103.

Do you have any judgment as to whether had you asked for documents in the form of those exhibits, that you would have received them?

A These look to me to be weekly type of forecasts. I can't tell from --

Q For purposes of this question, Mr. Wilson, assume that they are weekly or at least semiweekly internal projections within the financial department of Penn Central.

I ask you what is your judgment as to whether or not had you requested those documents they would have been furnished to you.

MR. ATLAS: Your Honor, is the question with respect to 101, 102, 103?

THE COURT: Yes.

MR. ATLAS: I think it's a faulty assumption,

your Honor. They appear first quarter --

MR. MANEY: 101, 102 and 103 appear to be two weeks from each other.

MR. ATLAS: I'm sorry.

A I have no way of knowing whether they would have supplied these to me or not if I had asked for them, but I would presume they probably wouldn't.

THE COURT: Would not?

THE WITNESS: Would not.

THE COURT: Why?

THE WITNESS: These look to me to be like weekly or biweekly -- I don't know whether there is one that was done every week -- but, weekly changes that were going on; since these were consolidated figures, and this was kind of an internal document that had so many assumptions and changes in it, I wouldn't have asked for it anyway. I wouldn't have put too much reliance on this weekly or biweekly type of change.

But, I just don't think something that's this fluid is something that they would be willing to share. Maybe they would have. I didn't ask for them. I don't know.

Q Do you have any knowledge as to whether, had you requested it, you would have been furnished with internal memoranda from Mr. Bevan to Mr. Saunders?

A About what?

Q Concerning cash management of the railroad.

A Internal memorandum between the senior officers of the railroad, that they would share those with me if I asked?

Q That's my question.

A I don't think they would have, no.

MR. MANEY: No further questions.

MR. ATLAS: No further questions, your Honor.

(Continued next page.)

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THE COURT: Thank you, Mr. Wilson.

Gentlemen, do we have any more live people?

MR. MANEY: No, your Honor. We are going to be offering pursuant to the stipulations approved by the Court, the deposition testimony on defendant's case, a Mr. Raymond Lemley, who is now the treasurer of Penn Central and at the time was assistant treasurer; the deposition of Mr. David Bevan, Chairman of Finance Committee, and Mr. John Corrigan, Chief Lending Officer of the First National Bank of Chicago, and the testimony of the prior trial of Franklin Simon Savings Bank v. Levy, a Mr. John J. Sullivan, a senior officer of the Manufacturers Hanover Trust Company.

While the particular deposition and prior trial testimony will be marked and submitted to the Court subsequent to the close of this evidence, we are offering certain evidence into evidence through the testimony of these witnesses at this deposition, and I think that should be accepted at this time so that should there be an objection to the testimony introduced in lieu of live [illegible] the Court is necessary I will not be embarrassed to [illegible] we have discussed [illegible] I intended to do which exhibits will be offered.

MR. MANEY: Your Honor, I would like to offer

into evidence the following exhibits which were discussed by Mr. Sullivan in his trial testimony in the Franklin Savings Bank case: BY --

THE COURT: Just a moment, please.

MR. DORKEY: Would you like those individually?

THE COURT: I think what we will do is, give the whole list and then let -- I think we did go one by one, didn't we?

MR. BREINDEL: I think it would facilitate.

MR. DORKEY: BY is a list of 72 banks which participate in various loans, and was prepared by Mr. Sullivan in June of 1970 and shows the participation as of June 21, the date of reorganization. He testified to it on page 846 to 848 of the Franklin trial.

MR. BREINDEL: If it was prepared in June 1970 I don't see the relevance, your Honor.

THE COURT: I don't think it makes the difference when it was prepared. The question is, is it at --

MR. DORKEY: Or shortly before that.

THE COURT: Does it indicate when the loans were made?

MR. DORKEY: No, but other evidence in the trial does indicate when the loans were made. The $300 million revolver and the Euro Dollar loan and various other loans.

THE COURT: Mr. Breindel, you wanted to put some things in after March 13 which were relevant and I think this is certainly relevant as to who loaned before March 13 and also after to show what the general attitude of lenders was with regard to the credit worthiness of Grand Central. Certainly the credit worthiness did not improve so if it was credit worthy at a later date it is some relevant evidence that it was credit worthiness earlier.

MR. BREINDEL: In addition to the fact this was as of June 1970 and apparently was compiled from documents of Mr. Sullivan. I don't have a chance to verify --

THE COURT: I can't comment on that. Insofar as these documents are supported by testimony elsewhere and you have not checked that out, then I will leave it until the actual presentation of the testimony for a final decision. I don't know what Mr. Sullivan's testimony is. I have been advised that he testified to what it is.

MR. BREINDEL: I think the source documents are in evidence and this is another document we don't need. If defendants --

THE COURT: It will be a lot easier to look at for me. The purpose is to simplify things. If you have reason to believe it is not accurate you can bring it to my attention and I won't take it.

MR. BREINDEL: If the defendants will represent that it is accurate --

MR. DORKEY: We know nothing to indicate that it is not accurate.

MR. BREINDEL: I say if you indicate --

THE COURT: Wasn't Mr. Sullivan questioned about this?

MR. DORKEY: Yes, and he said it is a listing of the secured and unsecured outstanding loans of the Penn Central Transportation Company by a long list of banks and loans --

THE COURT: If Mr. Sullivan's testimony is stipulated to be part of this record I will accept it unless you bring in a witness who says it isn't what he says it is. I don't mean to be abrupt. Unless there is some reason to suspect it, I will accept it.

MR. DORKEY: We now offer into evidence Defendant's Exhibit BD.

THE COURT: How many such exhibits have you got there?

MR. DORKEY: I think there are eight.

xx (Defendant's Exhibit BY received in evidence.)

THE COURT: Now, what did you say BD was?

MR. DORKEY: This is a memorandum by Mr. Sullivan

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recording a meeting which he attended held at the First National City Bank with the Financial Management of Penn Central and the meeting dealt with an increase in the revolving credit agreement from 100 million to $300 million. He testified to this at pages 849 to 858. There are four attachments to this memorandum. There is a list of banks and revolving credit, a list of those who attended the March 1969 meeting, a summary of the terms of the revolving credit agreement and source and application of fund for 1968 and '69 of Penn Central.

THE COURT: For what purpose is it offered?

MR. DORKEY: It is offered to show that the lenders to Penn Central were looking as a source of payment of their loans to the various discrete assets in the Penn Central system and it goes to the reasonableness of Goldman Sachs' credit investigation. Any comment?

MR. BREINDEL: If you feel this document dated March 12, 1969, is probative of Mr. Dorkey's position, we have no objection.

THE COURT: I do think so. If people in the industry considered certain factors as being relevant as to credit worthiness it seems probative to some extent.

MR. DORKEY: Your Honor, let me also say that Mr. Sullivan testified about these documents at length and

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to have it in evidence at this trial will make it much easier to understand his testimony in Franklin.

xx (Defendant's Exhibit BD received in evidence.)

MR. DORKEY: Defendant offers Exhibits AD and AA in evidence.

THE COURT: Which are you discussing first?

MR. DORKEY: AD. The reason I gave them to you together, they were apparently handed to Edward Jones, who is an associate of Mr. Sullivan, at a meeting between various banks who lend money to Penn Central and the financial management of Penn Central. This meeting was held on February 5, 1970 and in it they discussed the financial requirements of Penn Central and the past and future operations of Penn Central.

THE COURT: Who prepared AD?

MR. DORKEY: AD was prepared by Mr. Jones whom Mr. Sullivan testified was the person who had a duty to report to him and who did report to him. He was a junior to Mr. Sullivan at Manufacturers Hanover.

THE COURT: Sullivan was from Manufacturers Hanover?

MR. DORKEY: Yes. He was Vice President in charge of -- they divided up their credits by territory and he was assigned to the area to cover Penn Central and that was one

of the accounts involved.

THE COURT: Mr. Jones attended the meeting?

MR. DORKEY: Yes, Mr. Jones attended the meeting of February 5.

THE COURT: I take it Mr. Sullivan testified and gave an accurate description of the events?

MR. DORKEY: Yes, he did.

THE COURT: Any comments?

MR. ATLAS: No objection, your Honor.

xx (Defendant's Exhibit AD received in evidence.)

MR. DORKEY: The next document is AA. Page 3 of Exhibit AD, the last paragraph, the middle of the page, there is --

THE COURT: Page 3 only has one paragraph.

MR. DORKEY: Page 3 of AD, the sentence in the middle, "We were provided with the sources and application of funds for the Transportation Company for the past year and the estimates for 1970."

In the Franklin case Mr. Sullivan was asked whether AA was that which was referred to in AD and he said it was. That is page 863.

MR. ATLAS: No objection.

xx (Defendant's Exhibit AA received in evidence.)

MR. DORKEY: Your Honor asked about the date of

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AA earlier. Judge Metzner took Mr. Piel's representation that it was January 28, 1970. It is very hard to make out but you can certainly make out January --

THE COURT: I do see January something.

MR. DORKEY: Our best copy is January 28.

MR. BREINDEL: We will accept Mr. Piel's representation.

MR. DORKEY: Defendant now offers into evidence Exhibit FI.

This is a letter of August 8, 1974, from an official of Manufacturers Hanover to an official of Niagra Mohawk Corporation. It was designated as FG in Franklin and here as FI and was referred to by Mr. Sullivan at page 877 of his testimony as "the type of letter that was in use in 1969 and 1970."

THE COURT: What does that prove in our case?

MR. DORKEY: It is relevant to the issue that lines are subject to the conditions that the lender at the time the lines are taken down be satisfied with the financial condition of the company.

THE COURT: Is it in dispute?

MR. BREINDEL: I believe it is.

THE COURT: That a lender must be satisfied with the financial affairs of the company for the line to be

operative at the time --

MR. BREINDEL: I believe it is, your Honor. I believe there has been no testimony by the lending banks here.

THE COURT: If it is in dispute -- I am almost prepared but not quite to take judicial notice it is banking practice but if you dispute it, I will hear testimony on it. At the moment I don't think there is any question.

MR. DORKEY: There is testimony by Mr. Sullivan on their practice.

THE COURT: If this is merely illustrative of what he is talking about I will accept it as such.

MR. DORKEY: That's fine.

MR. BREINDEL: Your Honor, it is dated August 8, 1974. It is by a Mr. Lord of Manufacturers Hanover who didn't testify. There were numerous lending banks involved here. It would seem to me that the lending banks, the Penn Central would be the best one, the best evidence of whether or not or how qualified their bank line commitments were.

THE COURT: Mr. Breindel, I take it there is nothing to prevent you from pointing out the weakness of Mr. Sullivan's testimony but I don't think there is any point in my accepting his testimony and then refusing to accept an exhibit which he says is an example of what he is talking about. It may be perfectly worthless but at least it explains

to me what he is talking about.

MR. BREINDEL: To that extent, your Honor, if you are saying in order to make the depositions clear, you have to have before you the deposition exhibits, I have no objection.

THE COURT: I said insofar as the truth of the question of whether in 1968, '69, early '70 a bank line included the implied condition that financial affairs of the company must be satisfactory to the lender at the time it was drawn down is in dispute, I would want to hear some testimony. But, for the purpose of understanding Mr. Sullivan's testimony on that point I will accept this letter.

MR. DORKEY: Your Honor, it is not just that there is an implied condition the bank remains satisfied. It is an express condition in the letter between the bank and borrower.

THE COURT: It is expressed where it is actually specified. Where nobody says anything, it seems to me by definition it is implied.

MR. DORKEY: That's right but in this case I think it is the --

THE COURT: This case can tell us the practice as --

MR. BREINDEL: Your Honor, you have a letter of

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agreement dated in August 1974 between Mohawk and Manufacturers Hanover and Mr. Dorkey is arguing as to the interpretation of this letter.

MR. DORKEY: Only that it was the type of letter --

THE COURT: I am not concerned with the type of letter that was in use. I am concerned with, No. 1,was there anything as far as Penn Central is concerned and if there was no letter, what was the custom with regard to unwritten situations.

MR. DORKEY: Mr. Sullivan further testified or responded that this was the practice to have a condition that the lender be satisfied --

THE COURT: His testimony can stand on his own. I think Mr. Maney has a little advice for you.

MR. DORKEY: We do have a letter between Penn Central and another bank which we are offering into evidence.

THE COURT: I think it is settled. I am accepting this as being the thing that Mr. Sullivan was talking about when he was talking about it and if there is a serious dispute as to whether the bank lines made available to Penn Central, because that is what we are talking about, were subject to the lender being satisfied with the financial affairs of the company, I invite testimony, even if it takes

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another hour or two sometime.

xx (Defendant's Exhibit FI received in evidence.)

MR. DORKEY: Defendant offers Exhibit FH. FH, your Honor, is an approved list of commercial paper issuers prepared by Manufacturers Hanover. Mr. Sullivan testified about it. He testified that there were several categories whose designations changed over the years. However, category 1 remains the same and was, according to Mr. Sullivan, composed of those issuers, the paper of which could be purchased in unlimited amounts and he testified Penn Central was not removed from category 1 at any time before June 1970.

MR. BREINDEL: No objection.

xx (Defendant's Exhibit FH received in evidence.)

MR. DORKEY: Defendant offers ET. ET is another memorandum by Manufacturers Hanover, Mr. Jones, regarding a meeting subsequent to the February 5 meeting. This meeting is with Bevan.

THE COURT: Offering to establish what?

MR. DORKEY: Its relevance here is that during cross examination of Mr. Sullivan counsel tried to make the point that Manufacturers Hanover didn't know at the time that First National had withdrawn from the bridge loan, and this refreshed Mr. Sullivan's recollection that he had known

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it at the time.

THE COURT: This is in support of his testimony?

MR. DORKEY: This is in support of his testimony.

MR. BREINDEL: We have no objection, your Honor.

xx (Defendant's Exhibit ET received in evidence.)

MR. DORKEY: Defendant offers BI.

Your Honor, BI are the handwritten notes of Mr. Lepley, daily summary of transactions between Penn Central and Goldman, Sachs regarding sale of commercial paper and many of them contain notations at the bottom of the page made by Mr. Lepley --

THE COURT: He is a Penn Central --

MR. DORKEY: Penn Central. He was in charge on a day-to-day basis --

THE COURT: Did you say this is part of Mr. Sullivan's testimony?

MR. DORKEY: No, your Honor. This comes in through Mr. Lepley's deposition. He testifies about it on pages 34 to 36.

THE COURT: I take it this is offered at least in part. Is there anything beyond that?

MR. DORKEY: It shows Penn Central's understanding, among other things, Penn Central's understanding of Goldman, Sachs' policy with regard to the limit on inventory.

THE COURT: Do you want to give me an example?

MR. DORKEY: Those are put in inverse order. I think April 8.

THE COURT: I have April 8 here. What do you want to call my attention to?

MR. DORKEY: The very bottom of the page, "George Van Cleave agreed that they would take five million inventory tomorrow, if necessary."

It is also relevant in that Mr. Lepley records many of the complaints Goldman, Sachs made about Penn Central's inventory, at the bottom of the page, and similar notations.

THE COURT: All right.

MR. BREINDEL: Your Honor, to the extent that this document is referred to and authenticated by the deposition, we have no objection. To that extent. Otherwise we object.

THE COURT: I am not quite clear. I expect to find it has been authenticated by Mr. Lepley since he is the man who made these out. The question is, what do they prove?

MR. BREINDEL: Your Honor, I don't believe, as I recall Defendant's Exhibit BI, it is a cumulative series of Mr. Lepley's handwritten notes.

THE COURT: It is a daily summary?

MR. BREINDEL: I don't believe all those summaries

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Mr. Lepley testified to or was asked about. To the extent he was asked about any one particular day we have no objection.

MR. DORKEY: Your Honor, we offer it beyond that and we think -- I mean, he authenticated at least one copy in his deposition.

THE COURT: What are you going to want to argue from this exhibit that will not be found in his testimony?

MR. DORKEY: In his deposition testimony?

THE COURT: Yes.

MR. DORKEY: There is a great deal. Many of the sheets were not asked about during his deposition and we would like to point out to your Honor in post-trial briefing many of the notations he made regarding entire course of conduct between Penn Central and Goldman, Sachs. I don't think plaintiff challenges the authenticity of the document.

THE COURT: No, he does not.

MR. BREINDEL: We only have knowledge of the authenticity of those documents Mr. Lepley was asked about during his deposition.

THE COURT: I assume he was asked about the exhibit as a whole?

MR. DORKEY: It is not clear from the deposition he was. He was, however, asked at great length at Franklin.

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We didn't want to introduce the testimony from Franklin. On the basis plaintiff had certain of its railroad documents, I think 106 and 111, admitted into evidence on the basis that Mr. Lepley had testified in Franklin and there really wasn't any real question of authentication, although Mr. Lepley's testimony is not evidence in this trial, we refer of course to his testimony in Franklin.

THE COURT: It seems to me an exercise of futility unless you have a serious doubt.

MR. BREINDEL: Your Honor, I don't know. I would point out when we met in your robing room Mr. Maney successfully objected to certain plaintiff exhibits, I believe 96 or 97, which we contended were Lepley's handwritten notes. We have no objection to introduce in evidence properly authenticated --

THE COURT: To be sure I am always consistent, and it probably doesn't end up that way although I try to be, it seems to me there is a difference between the rulings I made before and one in which it is of record that even though Mr. Lepley didn't testify here, that these are all his notes, we all know that he has so testified. Now, if you have some reason to be concerned about the authenticity of these, whether he made them, let's get him in here and get it over with.

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MR. BREINDEL: Your Honor, I had several discussions with Mr. Maney. Mr. Maney had said at one point he was considering calling Mr. Lepley as a witness and in lieu of that would I accept his Franklin testimony. I said no, we were content to rely on his deposition testimony. One of my considerations was the extent of the document that Mr. Lepley testifies to. On that basis, Mr. Maney stated, for whatever his reasons were, he is not going to produce him alive, he is going to rely on his deposition testimony. If he wants to bring Mr. Lepley alive, we have no objection. But, I renew my objection to the extent that any part of BI that was not authenticated by Mr. Lepley and he wasn't questioned about it, there was no opportunity to cross examine him about it.

THE COURT: I understand. Do you want to say anything further?

MR. DORKEY: I think in his deposition Mr. Lepley did authenticate at least one of the daily summary sheets, that is, of April 30, 1970. I think --

THE COURT: Let's not go around in circles. If Mr. Lepley has somewhere said, "Look, I did all of these, I swear everything in them is correct or correct to the best of my ability," or some such attestation, I am prepared to admit them in evidence. That of course means it has to be

his deposition in this case because, unfortunately, the testimony from the other trial is not part of the case. If he has not done that, and you wish to admit the exhibits for anything more than what Mr. Breindel has agreed to, I will permit you to call Mr. Lepley for the purpose of dealing with the objection that Mr. Breindel makes and allowing Mr. Breindel to cross examine as to these documents.

MR. MANEY: Your Honor, may I speak only since my name was invoked by Mr. Breindel. It was subsequent to the robing room conference where representations were made that a witness had authenticated a document or group of documents in testimony which is not part of this record, but nevertheless there was no real issue as to its authenticity that on the representation by plaintiff's counsel your Honor admitted certain documents into evidence over our strenuous objection. On that basis, I advised Mr. Breindel that we were confident that in view of the fact that Mr. Lepley clearly identified all of those documents in his Franklin testimony, nevertheless we were using the testimony as evidence in chief, that we assumed that as a profession matter he would not raise a question as to the authenticity of these documents.

THE COURT: There is a difference between authenticity and substance. As I said before, when you make

these many rulings on these many items one may be inconsistent although one does his best to avoid it. It sounds to me the item you are referring to had to do with the fact that only the question of authenticity was before me. In this case Mr. Breindel is not claiming these items are not authentic -- am I correct -- you are not claiming these items are not authentic. You want to have the opportunity to cross examine Mr. Lepley as to their contents; is that correct?

MR. BREINDEL: Precisely. That was not done during his deposition.

MR. MANEY: Your Honor, we have strenuously objected to some of the other documents. They --

THE COURT: Maybe I better review my earlier ruling. I don't want to have a situation, Mr. Maney, I don't want to have a situation where the parties are in dispute as to what something means in these documents and I have no way of deciding who is right. The only way I can do that is to hear the witness. If that is true with regard to the documents you are talking about as well as these, then perhaps I will have to alter my ruling and hear whatever witnesses can clear up the matter. I am urging both sides not to make these objections just for kicks and I am assuming they are not made for that reason; if there is a serious

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question as to what something means we better hear the people.

MR. DORKEY: Perhaps the way to do it, your Honor, the way to do it is to ignore it. If we make an argument part of the document says something and plaintiff sharply challenges it and says that is not what the handwriting means, perhaps the way to do is ignore it. But, one can draw inferences from what it means if the handwriting is clear. I'm not sure if Mr. Breindel is challenging --

THE COURT: Would you know what you would ask Mr. Lepley if he --

MR. BREINDEL: Your Honor, I don't have the document in front of me.

For example, your Honor, I am looking at a sheet dated Tuesday, December 23, 1969.

No. 1 seems to say, it is somewhat illegible, the $50 million note is into Goldman, Sachs' inventory. The explanation of that doesn't leap out into my face. I don't know what it means. I would like the opportunity to ask Mr. Lepley what it means. In addition I would like to find out -- the first one I notice is dated December 15, 1969 -- I would like to know when he started keeping these.

No. 4, "I made sure --" something about 16 million commercial paper --

THE COURT: Let me make a suggestion. There are

hundreds of documents -- if not hundreds, there are tens or twenties. I am going to defer ruling on this until you advise plaintiff's counsel what information within these records you wish to bring to my attention in your argument. They can then advise as to whether they will continue to object or wish to cross examine on these points and I will have to rule at that point whether you are entitled to cross examine or not.

MR. BREINDEL: Your Honor, we have no objection at this date to have the defendants put Mr. Lepley on the stand.

MR. MANEY: Your Honor, I think it is a question of Mr. Breindel making up his mind finally at this time. He could have cross examined the witness three years ago when the deposition was taken. I suggest if Mr. Breindel objects at this later hour as to the authenticity or reason--

THE COURT: Were these an exhibit on the deposition?

MR. MANEY: One page was used. I don't know whether Mr. Breindel personally attended either deposition but a representative did and he was free to examine him.

THE COURT: I don't consider it unreasonable when you offer only one piece of paper not to cross examine a witness on a hundred pieces of paper.

MR. MANEY: I suggest if Mr. Breindel presses his objection, I would say the exhibit can be excluded. If there are any more witnesses, I think the decision has to be made today by both sides.

THE COURT: He was just asking me not to let this in unless the man is not available to testify. You are doing it the other way around. That's all right with me.

When this matter comes for decision before me, I don't want to have excluded pieces of paper If you are going to be able, as you implied by what you just said, to support any references in these papers with excerpts from the deposition, then I don't think we have a problem. If, however, you say to me this is such-and-such-and-such pages as Mr. Breindel just brought out and means so-and-so and there is nothing in the testimony to indicate what it means -- plaintiff, I should have said plaintiff -- and plaintiff disp[illegible]s it I will give you the opportunity to call Mr. Lepley or --

MR. BREINDEL: Your Honor, so the record is clear, could we have the one particular sheet that was marked in this deposition?

MR. DORKEY: April 30, 1970.

MR. BREINDEL: I have no objection to the April 30, 1970 sheet being offered in evidence, your Honor.

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THE COURT: What did Mr. Lepley say about the April 30 sheet? Was there anything he said that could be regarded as bringing in all the remainder of the sheets?

MR. DORKEY: Mr. Lepley testified basically, in conclusion he testified that it was a business record and he kept it -- that he first kept keeping -- "I would say from the time I first started out in December of 1969 right through to the bitter end."

THE COURT: There is no question in my mind that these are the records that Mr. Lepley kept. Unfortunately that doesn't solve all our problems but at least we are over that. I hope everybody understands my very clear ruling.

MR. DORKEY: A final exhibit, your Honor, Exhibit BZ, your Honor, is a letter agreement between Penn Central and First National Bank of Chicago. It is one of the documents by which a stand-by line is converted to a swing line. The last paragraph on the first page states, "This agreement may be terminated at any time by either of us, by written notice to the other but such termination shall not affect liabilities heretofore incurred hereunder."

THE COURT: You offer this as anything more than an agreement between Penn Central and the First National Bank?

MR. DORKEY: No. It was authenticated in the Franklin trial, page 551, by Mr. Lepley.

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THE COURT: It appears to be on Penn Central letterhead and I assume, Mr. Breindel, you have seen Mr. Schaeffer's signature the other time?

MR. BREINDEL: No, your Honor, I heard a statement from Mr. Maney in opposition to one of our documents that Mr. Bevan said it was a forgery, a document bearing his signature. I am not personally familiar with Mr. Schaeffer's signature and it wasn't brought up in Mr. Lepley's testimony and I don't know anything about its authentication.

THE COURT: I am going to read into the record myself his testimony with regard to the authentication of this in the prior trial, if necessary, if that is the only point that you make.

MR. BREINDEL: I have no objection other than authenticity, your Honor.

MR. DORKEY: Page 951, your Honor.

(Reading):

"Q I show you Exhibit BZ in evidence and ask you if that is one of the documents by which a part of the stand-by line was converted to swing line?

"A Yes, this is one of those documents."

THE COURT: He was asked this by whom?

MR. DORKEY: By Mr. Piel.

THE COURT: Was it admitted?

MR. DORKEY: Yes, it was.

THE COURT: I will admit it.

xx (Defendant's Exhibit BZ received in evidence.)

MR. DORKEY: That's all, your Honor.

MR. MANEY: Your Honor, in view of the Court's ruling and in view of my understanding summarizing, subject to connection, receipts of certain exhibits into evidence --

THE COURT: Really only one exhibit, isn't it?

MR. MANEY: The defendant at this time moves to strike, your Honor, exhibits in evidence which post-date the transaction of this case which, for the record, are PX-14, 15, 16, 18, 46, and 76, as not having had a relevance connection established and more particularly and in particular in regard to the fact that no testimony explaining these documents has been proffered. We move to strike Exhibits 101, 102, 103, 106, 108, 111 and 114, all of which appear to be from the files of the Penn Central totally unexplained, no evidence offered, no explanation given, and in view of Mr. Breindel's desire to cross examine to certain documents, we have the same desire ourselves, your Honor, and we move to strike those documents from evidence in this case.

THE COURT: I consider this an unfruitful approach. To say because the other side wants to strike you want to s

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strike.

MR. MANEY: Your Honor, I made that same argument in your Honor's chambers.

THE COURT: I don't see the issues as being exactly parallel. Let me comment separately.

First of all you talk about post-March 13 documents and I find frankly at the end of the trial my reaction as one in which each side wishes to offer post-March 13 documents to the extent they seem to support their respective cases, and my rule is that to the extent any post-March 13 document can shed light on the motives and behavior and reasonableness or unreasonableness of actions taken or not taken, they will be admitted. Obviously, for example, if on the 13th of April Mr. Wilson had written a letter saying, I knew all along that Penn Central was going to be bankrupt, it wouldn't make any difference whether it was written on the 13th of April or not. Some of the items that have been admitted are helpful to the plaintiff and some to the defendant, I think. I don't think it makes the slightest bit of difference but it is a question of whether they are probative of the issues before me.

With regard to the question of authenticity, I have ruled against Mr. Breindel in the last exhibit, where there was no authentication in the record of this case

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except that I have caused to be read into the record in this case of a witness in the earlier one. And, we have no question of authenticity with regard to Mr. Lepley's notes which is the only item it seems to me that I have not allowed in evidence for all purposes so far. Everyone of the others have been admitted.

MR. MANEY: I didn't mean to suggest and if I did I apologize that this was a quid pro quo --

THE COURT: All right, I have given you my position as to the post-March 13 exhibit and insofar as the non-authenticated exhibits are concerned they will be admitted except where anybody brings to my attention some reason to believe that they are not authentic in which case I will be more than happy to call whatever witnesses we need to establish that point. I ruled against Mr. Breindel once before when you said there was some evidence that Mr. Bevan had stated that something was a forgery and it seems to me the only manageable way to handle these things is to go ahead on the assumption that things are photocopies of Wall Street Journal articles, for example, which I have in front of me, is indeed a copy of the Wall Street Journal without calling somebody from the newspaper or the letters which appear to be on the letterhead of a company, are what they purport to be unless something is brought to my attention against that.

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MR. MANEY: My motion to strike was not based on authentication. It is based on the fact it is hearsay, unexplained, not a business record and these documents which appear to be railroad documents have not been explained subsequently.

THE COURT: Can you give me an example of one? There are so many. Can you give me an example of one which has been received for the purposes of establishing the truth of its contents?

MR. MANEY: 101, 102 and 103, your Honor.

THE COURT: I don't know that they were offered for the purpose of establishing the truth of contents, but for the purpose of establishing that Mr., whatever it is, of Penn Central was giving this information to Mr. Bevan.

MR. ATLAS: Exactly, Mr. Underhill was giving the information to Mr. Bevan.

THE COURT: I can see that it does or at least it is reasonable to permit the plaintiffs to argue that there was more information available to Mr. Wilson than he attempted to secure. It seems to me that your case stands and falls on whether, in any event, the information he did secure was adequate to fulfill his legal obligations. But, I don't see why defendant should be foreclosed from attempting to establish that other information existed. You may well

argue it existed, or it was meaningless or -- Mr. Wilson himself testified whether he got it or not, he wasn't paying much attention to it.

MR. MANEY: Your Honor, defendant rests.

MR. BREINDEL: In brief rebuttal, your Honor, I would like to reoffer two documents which were previously not admitted into evidence.

First, your Honor, as Plaintiff's Exhibit 36, the basic purpose of this document being, your Honor, is about ten lines down appears the statement, "He said that their auditors, Peat, Marwick & Mitchell & Co. --"

THE COURT: He being whom?

MR. BREINDEL: Mr. Verlander of Penn Central, "because of their stand-by commitment of $100 million to back commercial paper the amount could be shown as long-term debt."

We submit this, your Honor, for the purpose we believe it is probative as to the question of the viability of the bank lines, how solid they were. It seems to us if Peat, Marwick & Mitchell feels they are sufficiently solid to treat short-term debt as long-term, they are --

MR. MANEY: Your Honor, that is hearsay.

THE COURT: If you want to call from Peat, Marwick you could have; I couldn't find this as a meaningful

contribution.

MR. BREINDEL: Let me just point out, your Honor, a document was offered for the same purpose --

THE COURT: I will receive it. If you want me to receive it and it will not mean anything --

MR. BREINDEL: No, your Honor. Finally Plaintiff's Exhibit 51.

THE COURT: What is the date of this?

MR. BREINDEL: It is undated, your Honor. From reading its text it appears obviously, numerous references to 1967 and it starts off by saying, "There are currently about 400 companies which issue commercial paper," from that, it obviously was prepared prior to 1969. We offer it for two purposes, your Honor. If you look at the fourth paragraph on the first page, your Honor, the sentence which states, "While the Securities & Exchange Commission does not require a borrowing corporation to trace the dollars received from the sale of commercial paper, it is the intent of the law that such monies be used for current transactions."

We offer this to show that this knowledge was in Goldman, Sachs' files, it was in the head of Mr. Pieter Fisher, the new businessman assigned to the Penn Central account.

THE COURT: Is this a matter in dispute?

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MR. MANEY: Your Honor, this document does not come from Goldman, Sachs' files. I would assume hopefully Goldman, Sachs would advise --

THE COURT: Proceeding under the assumption they had knowledge of the law, certainly a number of witnesses had testified, they confirmed with the firm and sought no action letters from the SEC and he understood the provisions of 3A3, 3A6, and so I am regarding the fact that Goldman, Sachs knew what the law was and was charged to know what the law was as established.

MR. BREINDEL: Your Honor, it also serves the purpose of showing at least it was Mr. Fisher's understanding of the law that such monies was used for current transactions.

THE COURT: I am not sure to what extent I agree with Mr. Wilson's distinction of a railroad's obligation and other industrial companies' obligation. I am willing to find, and I don't think it is in dispute that the company was chargeable with and had knowledge of the law, whatever it was.

MR. BREINDEL: I have nothing further, your Honor.

THE COURT: Thank you.

MR. MANEY: Your Honor, is this an appropriate time to take up the question of schedule for post-trial briefs?

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THE COURT: We can go into the robing room.

(In the robing room.)

(Discussion off the record.)

THE COURT: As I understand it, it is agreed that each party will tomorrow designate to the other those portions of the depositions which each party intends to offer in evidence, and each party shall have how long to object?

MR. MANEY: I believe, your Honor, plaintiff's designations have been furnished. It is a matter of the receipt of the transcripts with those designations indicated by marginal lines for both sides to exchange on November 5 and then both sides can file by November 14 the actual transcripts with the objections indicated by marginal lines and perhaps by the separate code to separate lists.

THE COURT: That takes care of the question of depositions.

As far as briefs are concerned, plaintiff shall file its brief no more than 30 days after the receipt of the transcript of this trial and the defendant shall answer within 15 days after the service of the plaintiff's brief upon it and the plaintiff has the right to request the opportunity to reply as to matters which it believes it could not have reasonably anticipated, that is, new matter appearing in defendant's brief, and the Court will rule on such

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application.

Application should be made by letter.

Let's go off the record.

(Discussion off the record.)

(Time noted: 3:55 p.m.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Noel LeMay	4	41	95	97
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George Van Cleave	223	336	458	461
Jack A. Vogel	465	554	665	672
George E. Doty	676	706		
Gustave Levy	730	772		
Robert G. Wilson	836	938	1023	

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111,125,129		222
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Defendant	Identification	In Evidence
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A-187 & A-180		80
BN		229
CT		241
CL		245
CQ		248
UG		257
DX		272
CU,CW		286
CX		287
BM		314
A		322
AM-1,2,3,4		491
DN,DO		503
FA		697
FB,FC		706
FD		734
CB,CD,CE		769
CG		771
FK,FL,FM,FN		924
EY		1032
BD		1034
AD		1035

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Defendant	Identification	In Evidence
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FI,FH		1040
ET		1041
BZ		1053

C. TRIAL TESTIMONY IN *FRANKLIN SAVINGS BANK* v. *LEVY*, 406 F. SUPP. 40 (S.D.N.Y. 1975)

Trial Testimony of Thomas P. Asay in
Franklin Savings Bank v. *Levy*

Pages 55-56
Pages 77-84

THOMAS P. ASAY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STITT:

Q How old are you, Mr. Asay?

A Sixty.

Q Give us your address, please.

A My office address?

Q Yes.

A 1138 -- Legal Department, 1138-6 Penn Center, Philadelphia, Pa.

Q Would you give us a statement of your education and professional background?

A High school education only.

Q By whom are you presently employed?

A Penn Central Transportation Comapny.

Q How long have you been with Penn Central Transportation or its predecssor?

A Since 1934.

Q And whereabouts have you been located during that period, sir?

A In Philadelphia, in the Legal Department.

Q What was your position during the years 1969 to

1970?

A Office manager in the Legal Department.

Q What is your presention position?

A Manager, special studies.

Q Are you here presently under subpoena?

A Yes.

Q Do you have a copy of the subpoena with you?

A Yes, I do.

THE COURT: You don't need that.

Q Does that -- was that subpoena served last November, Mr. Asay?

A Yes, it is dated November 27, 1974.

Q Did it request the appearance in court or the production of certain designated documents?

A Yes.

Q Did you find those documents in the files of Penn Central?

A Yes, I did.

Q Did you at my request make copies of those documents set forth in the subpoena?

A Yes.

Q In addition to that did you also make an effort to locate a final additional document, a letter from Mr. O'Herron to Mr. Bloom of the Interstate Commerce Commission

THE COURT: It is a memorandum in which the addressee is Mr. Saunders, in which the typed name of the sender is David C. Bevan, and there are initials, "D.C.B."

But the question is, did Mr. Bevan write those initials, "D.C.B.," and Mr. Piel has read from testimony where he claims he didn't write them.

THE WITNESS: As I say, I cannot testify to that because I don't know. It is the way it appears.

MR. PIEL: Thank you. You have answered the question.

THE COURT: Objection sustained.

BY MR. STITT:

Q Mr. Asay, was there an employee for Penn Central during the months of February and March, 1970, named A. M. Underhill?

THE COURT: What's this, 75?

MR. STITT: 75 is a report from the -- SEC staff report, and I had designated it as an exhibit. My adversary has objected. It is not a Penn Central document. I don't intend to take it up with this witness.

(Record read.)

A I know there was an employee by the name of A. M. Underhill, but the exact dates that he was with the company, I am not certain.

Q What is your best recollection?

A I think he was with us at that time. But, as I say, dates, I can't testify actual dates.

Q Where was he located within the company?

A He was in our financial department.

Q At my request, did you make a search of the Penn Central files for memoranda prepared by Mr. Underhill for Mr. Saunders, dates of February 6th, February 19th and March 6th, 1970, Exhibits 76, 77 and 78 for identification, inclusive?

A Yes, I did.

Q Did you find those documents, Mr. Asay?

A Yes, I did.

Q Where did you find them?

A These documents were found in a file which I have in my custody. They came to me from the office of the chairman of the board.

Q That would be Mr. Saunders?

A Mr. Saunders' office, yes.

Q This is where you found these other materials consisting of the memoranda from Mr. Bevan that you testified about?

A Addressed to Mr. Saunders, yes.

Q Had you run across any of these documents before

you made your search in response to this subpoena?

A Yes.

Q When was that, sir?

A During the investigation by the government agencies, the SEC and the Senate Commerce Committee.

Q When was that in point of time?

A The SEC came on our property in late '70 and early '71.

Q At that time you first saw these originals of Exhibits F-76, 77 and 78?

A yes, because they are contained in files which are requested from the office of the Chairman of the board at that time, for review by the SEC.

Q Did you find other memoranda of a similar nature from Mr. Underhill?

A There are other documents similar to these contained in this particular file,. yes.

Q And signed by Mr. Underhill?

A Here again, I am not certain of Mr. Underhill's signature, but I have seen it, and these would appear to be his signature. But I cannot --

Q You made that comparison?

A Yes.

Q You have seen his signature on a number of

occasions?

A Yes.

Q You know that he was employed by the railroad?

A Yes.

Q I see in addition to Mr. Saunders, that there is indicated copies to a number of other gentlemen such as Mr. Gorman. Was there a Mr. Gorman who was employed with Penn Central during February and March, 1970?

A Yes.

Q What was his position?

A he was president.

Q I see also a notice to Mr. Bevan. What was his position? I don't know if that appears in the record.

A I believe Mr. Bevan was chairman of the Finance Committee.

Q And Mr. Flannery?

A I believe at that time Mr. Flannery was our Vice President of Operations.

Q Do we also have him as receiving a copy of the memorandum from Mr. Saunders to Mr. Perlman under date of September 12, 1969 ,Exhibit F-73 in evidence?

MR. PIEL: It speaks for itself, I think.

THE COURT: Yes.

A Yes.

MR. PIEL: It is typewritten.

Q Was there an employee named Large?

A Yes.

Q What was his job?

A He was either a vice president of Traffic or an executive vice president at the time. I am not certain.

Q We have covered Mr. O'Herron. He was Vice President of Finance at about this time, 1969 to 1970?

A Yes.

Q Was there a Mr. Cole employed by the railroad?

A Yes.

Q What was his position?

A Mr. Cole, I believe, at that time was vice president in the Executive Department.

Q And Mr. Hill?

A Mr.Hill, I believe, at that time was comptroller or he could have been the vice president and comptroller.

Q I notice each of these memos refers to a meeting on Monday addressed to Mr. Saunders. Are you familiar with any routine of meetings for Mondays in which he would be involved?

A No.

Q The enclosures appear to be projections for earnings for the first quarter earnings. Did you find similar

projections for other quarters of the other Penn Central Companies in its files?

A There appear to be documents of this nature in the file, although I haven't examined them from a study standpoint.

Q For periods prior to February, 1970?

A Yes.

Q You found those, did you not?

A Yes.

Q Are they of a similar nature to these three that I am holding in my hand?

A They appear to be similar, yes.

MR. STITT: Your Honor, I submit that Exhibits 76, 77 and 78 for identification have been authenticated.

I simply draw your attention to the fact that they were marked although I don't think identified by Mr. Bevan, that is Exhibits 9, 10 and 11 of his deposition, on May 3, 1973.

I make that disclosure to the Court. I think on the testimony of this witness they have been authenticated and I ask their admission.

VOIR DIRE EXAMINATION

BY MR. PIEL:

Q Mr. Asay, did Mr. Underhill ever sign a

communication to you?

A No, sir.

Q When you say it is familiar, you mean that when you looked in the file that was sent to you, you saw what we are looking at here, is that right?

A Yes, and other documents where he signed, his signature appears.

Q And some other documents where you saw the same thing?

A Yes.

MR. PIEL: If your Honor please -- let me just ask one more question.

Q All of these persons who are named here in typewriting on this document are top officials or were top officials of the Penn Central Company or the Penn Central Transportation Company as it was at that time, is that right?

A Yes, sir, that's right.

MR. PIEL: If your Honor please, on the face of these documents they are the kind of data that are examined for management purposes, which are not given out to outside people. There will be a wealth of evidence in this case of meetings between representatives of the railroad, Mr. Bevan, Mr. O'Herron, Mr. Loder and others, in which they met with people from Goldman, Sachs and met with people from the

Trial Testimony of John J. Sullivan in
Franklin Savings Bank v. *Levy*

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Q Did you know at that time, contemporaneously, not what you may have learned since, but did you know contemporaneously what Mr. Van Cleave, Mr. Wilson and Mr. Lynch were doing regarding talking to issuers about swing lines, inventories?

A. I did not.

MR. PIEL: Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

J O H N J. S U L L I V A N,

called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PIEL:

Q You are an officer of Manufacturers Hanover Trust Company?

A. Yes.

Q. What is your position?

A. I am a senior vice president.

Q. What was your position in 1969 and 1970?

A. I was a vice president to the bank then.

Q. What were your duties?

A. I was responsible for what we call the mid-

Atlantic District of the National Division.

Q. Will you explain that in terms of the bank's structure and how it gets its work done?

A. Yes. The National Division handles the bank's business outside of New York City within the continental limits. The National Division was then broken down into about six geographic areas.

The mid-Atlantic District was one and included the States of New Jersey, Pennsylvania, Delaware, Maryland and the District of Columbia.

Q. That was your area?

A. I was responsible for the business in that area.

Q. That is for any service that the bank would render to clients of the bank located in that area outside of New York City?

A. That is correct.

Q. Were you responsible for the bank's decisions -- withdrawn.

Were you responsible for handling the matter of loans that would be made to clients of the bank in that area?

A. Yes, I was.

Q. Did that apply to consumer credit loans?

A. No, it did not.

Q Or small personal loans?

A No. Small personal loans are handled out of a separate department of the bank.

Q What kind of lending activity were you responsible for?

A I was responsible for lending to the customers we solicited and serviced, and, for the most part, they were large nationally known companies.

Q Including the Penn Central?

A Including Penn Central.

Q Did you have authority to grant loans without consultation with superiors?

A We technically have a dual signing system so that in the National Division all loans are approved by two officers. I did have signing authority in conjunction with other officers of the bank.

Q Up to what limit?

A At that time, with a junior officer, up to a limit of, I believe, three to $5 million, and with a senior officer, to amounts in excess of -- to amounts up to the legal limit of the bank.

Q If you were dealing with amounts in the neighborhood of ten to $20 million, what would be the procedure for deciding, I don't mean investigation and the like, I mean

chain of authority, decisionmaking, what would be the procedure for determining whether or not that loan would be made?

A. I would recommend it initially and seek the necessary approvals of senior officers.

In the case of an amount of $10 million, I would get the approval of the head of the National Division who was a general loan officer.

Q. General loan officers have authorities up to what amount?

A. I believe then it was $10 million.

Q. If it were an amount in excess of that to the same borrower?

A. Two general loan officers' approval would be required.

Q. I believe these matters all appear in documents here, so just to summarize this as being the subject matter that I want to ask you about, is it correct that Manufacturers Hanover had a 20 million participation in the 300 million revolving credit agreement with Penn Central Transportation Company?

A. Yes, that's correct.

Q. It had a 3 million participation in the 50 million dollar Euro-dollar revolving agreement with Penn Central

Transportation Company?

A. That's correct.

Q. It made, without participation with other banks, an unsecured loan to Penn Central Transportation Company which was last renewed by a new loan or a replacement loan in December 1969, which started out at $13 million in April, was it, 1969?

A. In early 1968, I believe.

Q. In early 1968.

THE COURT: How much was it in December of 1969?

Q. $7-1/2 million?

A. That's correct.

Q. In February of 1970, it took a $10 million participation in what was known as the bridge loan and which was a loan made to Pennsylvania Company, a wholly-owned subsidiary of Penn Central Transportation Company?

A. That's correct.

Q. That was an unsecured loan?

A. Yes.

Q. So that your total loans to the complex as of early February 1970 was $40-1/2 million, is my arithmetic on that amount.

Do you know whether, in terms of the total

amount of credit extended or money loaned, is Manufacturers Hanover the largest lender to Penn Central, or second, third, or what number?

MR. STITT: I object to the form of this question.

MR. PIEL: If he knows.

THE COURT: Overruled.

A. So far as I know, we were not the largest lender but amongst the top half-dozen lenders in amount outstanding.

Q. The largest lender was?

A. I believe it was First National City Bank.

Q. How long had a lending relationship existed between your bank and Penn Central?

A. The relationship went back to the early part of the Twentieth Century, is my understanding.

Q. With the Pennsylvania --

A. With both the Pennsylvania Railroad and the New York Central.

Q. When did you first have responsibilities with regard to loans extended to Penn Central, and by that I mean either Penn Central or its predecessors?

A. I first became involved in the relationship in the early sixties. I believe it was in 1962.

Q. We will get to more particular questions about

Penn Central, but just for a little background, would you give us a general description of what your bank did in those times, what the practice was, with regard to investigating and considering the credit of a company that was coming to you to borrow money?

THE COURT: In 1962?

MR. PIEL: No, no, I beg your pardon, in 1969 and 1970.

MR. STITT: If your Honor please, we are talking about Penn Central Transportation Company and commercial paper, and I just question the relevance of this line of questioning.

THE COURT: Overruled.

Q Do you have my question, Mr. Sullivan?

A Yes. You asked what our practice was with regard to approving the credit of a company requesting a loan.

It was the practice of the bank to lend -- it was and is -- only to those companies with whom we had relationships and with whom we were familiar.

THE COURT: Familiar with what?

THE WITNESS: Familiar with the management and the financial condition. We would investigate the backgrounds of the management and determine whether we thought

they were competent as managers.

Insofar as the financial condition of the company was concerned, we would analyze the balance sheets and operating statements and other financial data that was made available to us by the company and credit services, such as Standard & Poor's, Moody's, and others.

Q What others? I think we should know what others, if you can tell us.

A There are other more specialized credit services than Moody's and Standard & Poor's. I don't recall --

Q Let's get with specific reference to railroads. Moody's has a separate and special service on railroads.

A There are transportation manuals available from Moody's and there are services, the names of which I do not recall, that make available ICC information in a digestible form.

The bank's practice is to review the names of borrowers and applicants for borrowing, for loans, in our Credit Department. The report is then reviewed by the lending officers responsible for the relation or the geographic location, if no relationship exists.

Q How much money was owed to Manufacturers Hanover by the Penn Central complex on June 21, 1970?

A Approximately $45 million.

Q. I show you a document produced from your file marked here Exhibit BY for identification.

I ask you if you can identify that document for us.

A. Yes, I can.

Q. What is it?

A. It is a listing of the secured and unsecured outstanding loans to the Penn Central Transportation Company by a long list of banks and loans also to the Pennsylvania Company.

Q. The Penn Co. heading on the right that extends across four columns is loans to Pennslyvania Company?

A. Yes.

Q. And to the left of that are loans to Penn Central Transportation Company?

A. That's correct.

Q. We see the 300 million revolving credit commitment, we see unsecured bank lines, then we see the Eurodollar loan, and then there is something called working capital loan with a total outstanding of $30.4 million.

Is that the bridge loan?

A. No.

Q. What is that loan?

A. Those were loans made by First National City

Bank and Chase to Penn Central Transportation Company.

Q. I, of course, misspoke because the bridge loan is over under Penn Co.; is that right?

A. That's correct.

Q. Is the bridge loan the column headed Chemical 50 Million?

A. Yes, it is.

THE COURT: What is this Euro-dollar loan?

THE WITNESS: That's a $50 million loan that was made by a group of banks, I believe, in early 1969 to Penn Central Transportation Company.

THE COURT: What does the Euro-dollar have to do with it?

THE WITNESS: The dollars were provided out of Europe. They were provided by European branches of the American banks.

THE COURT: Go ahead.

MR. PIEL: I offer it in evidence.

THE COURT: Any objection?

MR. STITT: May we have the date this document was prepared?

Q. Can you fix the date as nearly as possible from inspection?

A. My recollection is that this was prepared in

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early June 1970.

MR. STITT: Your Honor, my objection would be as to relevance.

THE COURT: Overruled.

xxx (Defendants' Exhibit BY was received in evidence.)

Q Let's turn first to the $300 million revolving credit agreement.

That started out at some earlier date as an agreement by which the banks undertook to lend up to $100 million; is that right?

A That's correct.

Q And then in April 1969 was expanded from 100 million to $300 million that the same group of banks would stand ready to lend upon call?

A I am not sure that it was the same group of banks, but it was expanded from 100 to $300 million.

Q You may have added some banks or membership in the group might have changed, is that it?

A Yes.

Q That was a firm commitment for a period of time; is that right?

A Yes.

Q Until when?

A. I believe until 1976.

Q. And it was also agreed as part of that agreement that $50 million of it would be segregated and made available to back up commercial paper in case of a need to meet maturities at some time?

A. That is correct.

Q. Now I show you Exhibit BD for identification. Were you the author of that document?

A. Yes, I was.

Q. Was this document made by you to record a meeting held, your participation at a meeting held at the First National City Bank with the financial management of the Penn Central Company in March 1969?

A. Yes.

Q. Is it a regular standard practice in your organization to prepare record memoranda of this kind with respect to meetings in which you discuss finances?

A. Yes, it is.

Q. And are they kept as part of the records of Manufacturers Hanover?

A. Yes.

MR. PIEL: I offer it in evidence.

MR. STITT: No objection, your Honor.

(Defendants' Exhibit BD was received

in evidence.)

Q. Does this deal with the increase in the revolving credit agreement from 100,000 to $300,000?

A. Yes, it does.

Q. Is there an attachment on this exhibit to your memorandum that lists the participant banks in the original 100 million and in the 200 million increase?

A. Yes, there is.

Q. Showing that you doubled your participation, Manufacturers Hanover?

A. Yes.

Q. Is there also a document attached entitled Penn Central Company's Source and Application Statement, 1968 and 1969?

A. Yes.

Q. Will you tell us what that is?

A. This was prepared by Penn Central to show the sources of cash, actual in the case of 1968 and forecasted in the case of 1969, and the uses to which cash was put in '68 and was expected to be put in 1969.

Q. How long did that meeting go on, if you recall?

A. I don't recall the length of it.

Q. What is your best recollection?

A. A couple of hours.

Q Having looked through this memorandum, does this record, what would you say, the highlights or the substance, omitting details, or what?

A That would be the highlights of the meeting.

Q There would have been further detailed discussion occupying the two hours?

A Yes.

Q While you are looking at that source and application statement, was that examined at the meeting?

A My recollection is that it was reviewed by Mr. Bevan.

Q Did he get questions from the bankers about it while he reviewed it?

A I don't recall specifically that there were questions, but in meetings like that, there usually is questioning of the financial officers.

Q In your consideration of whether or not to double your participation by another $10 million in the loan that was going to go out to 1976 for a line of credit, I guess that is not the right term, is it, line of credit? It should be called a revolver?

A Revolving credit.

Q Revolving credit agreement, because it was a fixed term and it was a commitment; is that right?

A. Yes, it was.

Q. In your consideration of the decision to double your participation and have that money out until 1976, did this source and application statement have significance for you?

A. Yes, it did.

Q. Will you please review this and explain to the Court what significance this did have for you regarding the credit of Penn Central Company?

A. This was one of the items we considered in reviewing the credit of -- the financial condition of the Penn Central at the time. It showed a fairly substantial flow of cash from depreciation and equipment financing, but it also showed in 1969, that is, but it also showed the heavy requirements to meet maturities and to provide capital expenditures during the year.

Q. By the way, so we are clear on our terms, at this time in April or March, excuse me, March 12, 1969, the date of this meeting, Penn Central Company was the parent company, the railroad company, and was the publicly-owned company which owned operating and nonoperating subsidiaries; is that right?

A. That's correct.

Q. Then on October 1, 1969 that company, that same

company, changed its name to Penn Central Transportation Company, and a new company took the old name and became a holding company over it; is that correct?

A. That's correct.

Q. So that if we go back to the sheet that showed the revolving credit agreement where it says at the top Penn Central Company Credit, after October 1, 1969, that was an agreement that -- revolving credit agreement held by Penn Central Transportation Company; is that right?

A. That's correct.

Q. At this time in deciding to double your commitment by another $10 million out to 1976, was any special credit analysis or investigation made?

A. I don't recall that there was a special credit analysis made. It is the practice of the bank to review periodically the credit of borrowers and particularly those where we have sizable commitments outstanding or to be outstanding.

My best recollection is that there was no extensive new credit analysis done, but there was reliance on the review which had been done at an earlier date and by our analysis -- by "our" I mean the responsible officers -- of the new material which was furnished by the Penn Central at the meeting.

Q You kept yourself informed about its published figures and the service manuals like Moody's? Did someone in the bank follow those in the interim?

MR. STITT: I object to the leading, your Honor.

THE COURT: Overruled.

A We kept ourselves informed through the media of published financial statements of the Penn Central.

Q But without making some formal display or memorandum out of the whole thing; is that correct?

A. That's correct.

Q Now, let's go to the paragraph that begins at the bottom of the page, Exhibit BD.

According to this, Mr. Bevan said he didn't feel in a position to forecast specifically beyond the balance of the year 1969. However, he reviewed sources of repayment for the 300 million credit --

MR. STITT: May I ask counsel where he is reading from?

MR. PIEL: The paragraph starts at the bottom of Page 1.

Q I am not going to burden the record by reading this, but I would like you to read through that and note what he is saying about sources of repayment.

(Pause.)

Q. Mr. Sullivan, based on your familiarity with that railroad, with the condition of the financial markets at the time, were you satisfied that Mr. Bevan's explanation of how he expected to, in the course of time, be able to meet this obligation of $300 million, that that was reasonable and feasible?

A. Yes, I did.

Q. Do you see the third source of repayment that he mentions, a third source of repayment is the sale of individual investments in Pennsylvania Company?

A. Yes.

Q. The stock of Pennsylvania Company, had that been pledged by this time for the Euro-dollar revolver?

A. No.

Q. Or for this revolver?

A. It was eventually pledged as security for the $300 million revolver.

Q. But that did not prevent the use of at least some of the assets of subsidiaries to support financials for upstream assistance to the parent; is that right?

MR. STITT: I object to the form of the question, your Honor. It is leading, it goes to a very complicated document.

THE COURT: I don't understand it myself.

MR. PIEL: I will withdraw it and try again.

MR. STITT: A very lengthy document, I should say.

Q. When was the stock owned by Penn Central Transportation Company in Pennsylvania Company pledged to secure the revolver, the 300 million revolver?

A. In May 1969.

Q. Thereafter, Penn Central Transportation Company could not have sold the stock of Pennsylvania Company without a release from the lenders?

A. That's correct.

Q. However, Pennsylvania Company could undertake financing based on its assets, is that not correct?

A. That's correct.

Q. And the proceeds of such financing could be and were later passed up to the Pennsylvania Transportation Company for its use; isn't that correct?

A. That's correct.

Q. When it says, therefore, in this memorandum a third source of repayment is the sale of individual investments in Pennsylvania Company, I ask you, Mr. Sullivan, did you know of any reason why, if the management of Penn Central had wanted to sell individual investments, they

could not have proceeded to do so at any time?

MR. STITT: I object to the form of the question, your Honor. It involves a written document of some length.

THE COURT: I sustain the objection.

Q In making your credit decision to double your investment in this revolving credit agreement or your exposure in this revolving credit agreement, did you take into account in your own judgment and estimation whether or not the management could, if they wished, or had occasion to at any time sell various individual investments of Pennsylvania Company?

A. Yes, we did.

Q. That was something you took into account?

A. That was one of our credit considerations.

Q. You understood they would be free to make such sales?

A. They were --

THE COURT: Unless they were already pledged.

Q. To the extent that they were not pledged under some instrument?

A. That's correct.

MR. PIEL: I call your Honor's attention to the fact that the offering circular in December of

Pennsylvania Company does list which ones were and were not pledged.

Q At the end of this memorandum there are some remarks by Mr. Bevan and Mr. Shaffer appreciative of your assistance to the railroad, and it winds up by saying, "They did hope we would stand by to take a larger share of the credit if other participants were unable to take their portions. We have said that we were willing to do so."

Would you tell us briefly what the basis was for your being willing to do so?

A. First of all, we were satisfied with the credit.

Secondly, we thought that a larger share would be more representative of the relationship that the railroad maintained with Manufacturers Hanover.

Q. Could I ask you if that means that it was a matter of prestige to have a larger share in the financing of a company like Penn Central?

MR. STITT: I object to the form of that question. Leading and suggestive.

THE COURT: Overruled.

A. There is an element of prestige in whether you rank amongst the first tier, second tier or third tier of a company's banks.

Q. Is that particularly important with respect to

companies that are well regarded as credit by banks generally?

A. Yes, that's true.

Q. Am I correct, and correct me if I am wrong, I am just trying to save time by this form of question, was First National City Bank called the leading bank on the revolving credit agreement?

A. Yes, it was.

Q. Does that mean that they took the initiative of arranging it and inviting other banks to participate?

A. It means that they act as agent for the other banks in fulfilling certain duties required under a revolving credit.

Q. From your general knowledge, look again, if you will, at the participants in the revolver. It is attached to that memorandum.

From your knowledge and experience over the years in participating in such agreements with other banks, and I take it you have done that a number of times?

A. Yes, we have.

Q. Does each and every one of those banks make the kind of a credit study and investigation that you make or do some of them rely on the leaders in the group to have exercised sound judgment about worth and credit?

A. I don't think it is possible for me to generalize

about a list of banks as long as this.

Q. And I don't mean these particular banks. I am talking about in general, what generally happens in that regard when you put together, if I may call it, a syndicate of many banks who participate in a loan.

A. If the syndicate is made up of large and fairly sophisticated banks, there would be a credit analysis done by each of those banks on their own, without relying on the judgment of the lead bank.

Q. What about smaller banks that participate?

A. In many cases smaller banks, because of a lack of expertise or staff or because of confidence in other members of the group, will rely on the judgments of the lead bank or banks in the credit --

Q. Briefly, with regard to the unsecured loan that Manufacturers Hanover made to Penn Central Transportation Company --

MR. STITT: May we fix the date, please?

Q. -- originally in the amount of $13 million sometime in 1968, renewed for $10 million in April 1969 and then again renewed for $7-1/2 million in December of 1969 -- is that right?

A. Yes. I am not -- I don't recall the exact dates, but the amounts are correct.

Q Do you recall that the last time it was renewed was in December of 1969?

A That's correct.

Q And you renewed it for what period?

A For a six-month period.

Q To June 30, 1970?

A Yes.

Q At what rate?

A At the prime rate.

Q When you did that, the loan was due and payable, wasn't it, in December 1969?

A Yes, it was.

Q They paid down $2-1/2 million of it and you gave them a renewed loan for the balance?

A That's correct.

Q Did you at that time make any special credit analysis or special study different from your usual practice of simply following the information as it comes out in the manuals?

A No, we relied on the credit information that was available in the bank and the regular review of the railroad's condition. That was done by the bank.

Q Now we come to the bridge loan, and I show you Defendants' Exhibit AD for identification. This appears

to be a memorandum dated February 5, 1970 by one Edward A. Jones.

Who is Mr. Jones?

A. He is an officer of the bank who reported to me.

Q. Is this document like Exhibit BD the same kind of a memorandum as your memorandum of March 12, 1969 in reference to the records of the bank?

A. Yes, it's a memorandum for the file.

MR. PIEL: I offer it in evidence.

MR. STITT: No objection, your Honor.

xxx (Defendants' Exhibit AD was received in evidence.)

Q. While you hold that before you, if you will, for a moment, Mr. Sullivan, I am coming back to it, but first I want to show you Defendants' Exhibit AA for identification. There is a date on the lower left-hand corner that is almost obliterated on my copy, but I think it says January 28, 1970.

Do you see that?

A. It is obliterated on mine.

MR. PIEL: It is on the lower left-hand corner, your Honor, it is a bad reproduction --

THE COURT: Not on my paper.

MR. PIEL: We will have to reproduce it again,

your Honor.

THE COURT: I will take your representation as to the date.

MR. PIEL: It does show on my copy enough to read.

THE COURT: What is it?

MR. PIEL: You should write in the lower left-hand corner, to make it complete, January 28, 1970.

Q On the last page of Exhibit AD, Mr. Jones' memorandum, there is a sentence in the middle of the paragraph, "We were provided with a sources and application of funds for the transportation company for the past year and their estimates for 1970."

Do you see that?

A. Is this on Page 2?

Q Page 3, the last paragraph, about the middle of the paragraph.

A. Yes, I see it.

Q Can you tell us if Exhibit AA for identification is that sources and application of funds statement?

A. Yes, I believe it was.

MR. PIEL: I offer it in evidence.

THE COURT: Any objection?

MR. STITT: No objection on the testimony of

this witness.

xxx (Defendants' Exhibit AA was received in evidence.)

Q Was this a meeting which considered whether or not you and other banks would participate in the so-called bridge loan?

A Yes, it was.

Q And you did take the participation, as we have seen.

A Yes, we did.

Q Were you involved in that decision?

A I was.

Q Mr. Jones reported to you and informed you by this memorandum of what was learned at the meeting; is that correct?

A That's correct.

Q With that information and other information at your disposal, you ultimately came to the conclusion that Manufacturers should participate to the extent of $10 million, is that right?

A Yes, it is.

Q Again, if you will look at Exhibit AA, sources and application of funds statement that the railroad financial officer presented in connection with their request

for this bridge loan, would you tell the Court what, if any, significance this information had for you contributing to your decision to participate to the extent of $10 million? If you look at AA, it's the one I am asking you about.

A. This shows us generally the expected tight cash position of the railroad itself during the year 1970. It shows the cash position declining to $50 million and the need for $225 million of equipment and other financing during the year to provide for the capital expenditure program and heavy debt maturities during the year.

Q. If you look at the top line, you said this showed -- excuse me. I am thinking of the other exhibit.

The last column shows us the actual results at least to the extent that they were available on this date of the 1969 cash flow?

A. Yes, it does.

Q. And it shows on the top line, does it not, that Penn Central Transportation Company had suffered a net loss on the income line of $56 million the year before?

A. Yes.

Q. And that it was projecting the same figure for now starting year of 1970?

A. That's correct.

Q. Again, at this time, did you perform in the bank

any special study or analysis or was it a matter of relying on a regular update of your ongoing consideration of it?

A. At this time we did examine more closely the Pennsylvania Company.

Q. To whom you were making this bridge loan?

A. Which was to be the borrower of the $50 million, and satisfied outselves as to its creditworthiness.

Q. In connection with the presentation made here to your associate, Mr. Jones, and the representatives of other participating banks by Mr. Bevan and the people who came with him as shown in this memorandum, the statements that they made and this document that they furnished, did you or anyone at your direction ask them for underlying documentation of any kind to back this up or prove it?

MR. STITT: Your Honor, the only trouble I have with the question is a reference to statements at a meeting which this witness did not attend.

MR. PIEL: I am asking whether he or anyone at his direction, anyone to his knowledge in the bank, Manufacturers Hanover, working under him, the responsible officer for this matter, asked the Penn Central financial officers to back up the statements they made at the meeting and by way of Exhibit AA through furnishing underlying documentation to prove it.

A. My recollection is that we did not ask for any additional documentation.

Q. Who were the certified public accountants, if you recall?

A. I believe Peat, Marwick was on the books.

Q. Did you call up Peat, Marwick and say, "Are you sure they have those receivables"?

A. No.

Q. You relied on Peat, Marwick's certification of the financial statements?

A. Yes, we would have.

THE COURT: Is this a good time to suspend for lunch, Mr. Piel?

MR. PIEL: Yes, your Honor.

THE COURT: 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

2:20 P.M.

J O H N J. S U L L I V A N, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PIEL:

Q. We were speaking, Mr. Sullivan, of the bridge loan arranged in February 1970, the purpose and intention of which was to tide the company over toward public financing which it was planning for the springtime; is that right?

A. That's correct.

Q. Was the bridge loan a loan for commitment for a specific length of time?

A. Yes, it was.

Q. What was it?

A. It was until the Pennsylvania Company sold the debentures or four months, whichever was earlier.

Q. At the time in February when you were considering that commitment to the bridge loan, what were your expectations with regard to the long-term financing to come in the spring?

A. We expected that the Pennsylvania Company would be able to sell its obligation and that the bridge loan --

THE COURT: When you say their obligation, you mean the debentures?

THE WITNESS: The debentures, yes, sir.

A. (Continuing) -- and that the bridge loan would be repaid from the proceeds of that successful sale.

Q. In fact, that public financing did not take place?

A. That's correct.

Q. What was the state of the market in the spring?

A. It was a very disturbed market, as I recall. Interest rates were rising, money was very tight.

Q. Were there a number of security issues called off in the spring or indefinitely postponed?

A. I don't recall other issues being postponed.

Q. Again, as we saw in the March 12 memorandum --

THE COURT: Do you want to refer to exhibit numbers for ease of identification?

MR. PIEL: Yes, your Honor.

Q. That is BD in evidence, we saw there that Mr. Bevan had discussed the company's needs and its plans for how it would meet those needs.

Here again, in this memorandum of Mr. Jones', which is Exhibit AD, he discussed the needs and his plans for meeting them, which we note in reference to the company feels they have a number of options --

MR. STITT: May the record show which company

is being referred to?

THE COURT: This is the Pennsylvania Company, isn't it?

MR. PIEL: The paragraph begins, "The Penn Central System forecasts needs for 165 million in capital expenditure" --

THE COURT: Exhibit BD?

MR. PIEL: No, that is AD. BD was March.

I am calling attention to the fact that there was a similar discussion as in March, the same type of topics were covered.

THE COURT: You are referring now to the second full paragraph?

MR. PIEL: Yes, your Honor. I am calling the witness' attention to references to a prospective $1 million debenture issue with warrants for the purchase --

THE COURT: You are leaving off the zeros, too. $100 million debentures.

MR. PIEL: I beg your pardon, your Honor, yes.

Q An additional $50 million to be raised by some other method, the feeling of the company that they had a number of options open, timing of the planned debenture issue and reference to First Boston Corporation and Glor-Forgan as heading the prospective underwriting.

Will you please tell the Court who First Boston Corporation and Glor-Forgan were?

A. They are investment bankers.

Q What is their standing in the financial community?

THE COURT: Was their standing. Glor-Forgan doesn't exist any more.

Q What was their standing in 1970?

A. Excellent standing.

Q Skipping a paragraph, Mr. Bevan also outlined additional financing plans but made reference to the fact that the Pittsburgh and Lake Erie had no bonded debt on its balance sheet, and so on.

At the time that these proposals and plans were reported to you by Mr. Jones and you had them under consideration in connection with participating in the bridge loan, what was your judgment as to whether these proposals and plans were feasible and realistic?

A. We decided that there would be a source of repayment for the bridge loan and that it was reasonable to expect successful sale of the $100 million debenture offering or if that was not successful that there were alternate sources of cash to the company for repayment.

Q You, therefore, considered that your participation

in the loan would be a prudent thing to do?

A. That's correct.

Q. In the paragraph that we skipped, which is the third paragraph on the first page, there is a reference to Mr. Pat Bowditch.

Who is he?

A. He is an officer or was an officer of First National City Bank.

Q. I should have said was. We are talking about the time of this memorandum. He indicated privately to someone else than Mr. Jones that he would suggest that the company seek the funds in the Euro-dollar market. This phrase reoccurs, and there is a Euro-dollar loan to Penn Central here. I wish you would explain to the Court what the significance of that is.

What is the difference between a dollar loan and a Euro-dollar loan, how does it work and why do they resort to the Euro-dollar market?

A. Well, they are both dollar loans. The source of the money is the difference. A domestic loan would be from domestic sources. A Euro-dollar loan would be from banks, American or European, who have dollars on deposit overseas.

The Euro-dollar market in 1969 was a source of

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financing for many companies, including the Penn Central. Mr. Bevan sought to tap various sources of funds and the Euro-dollar market was first tapped for the $50 million loan in which our bank had a $3 million participation.

The reference to Mr. Bowditch's comment here indicates he thought that that market, that Euro-dollar market, would serve better as a source of funds for the Penn Central than the banks domestically which are under pressure because of the high loan to deposit ratio of most banks at that time.

Q. In other words, the loans to deposit ratios were easier in the European Euro-dollar market?

A. That is correct.

Q. You have said that when you were making this loan you knew that the proceeds of it were to go to the use of the Penn Central Transportation Company.

A. That's correct.

Q. At the time of the making of that loan, had anything come to your attention, in February 1970, that is, had anything come to your attention that suggested to you that before the year was over Penn Central Transportation Company might file for reorganization?

A. No.

Q. If you had any such information, would you have

made the loan to the Pennsylvania Company?

A. No, we would not have.

Q. As to the personnel of the railroad, you knew Mr. Bevan?

A. Yes.

Q. Mr. O'Herron?

A. Yes.

Q. Mr. Loder?

A. Yes.

Q. You have told us that in any consideration of a credit, particularly a new credit, I think you indicated, one of the things you do is examine into the history and background of the management to get some kind of an appraisal of the kind of people they are.

A. That's correct.

Q. You did that in respect of the people who were in the management of Penn Central?

A. Yes, we did.

Q. Did you arrive at a judgment and opinion about the quality and character of these men for integrity and ability?

A. We considered the ones you mentioned as capable, capable financial people.

Q. Did you know their reputations for integrity

and ability?

A. They had excellent reputations for ability and integrity.

Q. What were their reputations?

A. Excellent.

Q. Did you mean that you didn't try to appraise their integrity yourself, you judged their ability, is that what you meant, in defining your answer?

A. No, by my answer I meant that from their background and actions and from their dealings with our bank, we considered them to be eminently qualified for the job that they were doing.

Q. Did you have anything come to your attention that made you question their integrity?

A. Not at that time.

Q. Did anything come to your attention that made you question their integrity at any time before March 16, 1970?

A. No.

Q. Was your understanding of the character and reputation of Messrs. Bevan and O'Herron a factor in your analysis leading up to your recommendation to participate in this bridge loan?

A. Yes, it was.

Q. In what respect? Why was that important?

A. Because of the statements that Mr. Bevan made at meetings, such as the meeting described in the memo of February 5, and his analysis of the operating condition of the railroad and steps that were being taken to return it to profitability. We considered his judgment an important factor in the future course of the railroad.

Q. Will you state for the Court, please, what is meant by the term "line of credit"?

A. The line of credit is an availability, a facility available from a bank to a borrower, to lend usually during the coming year and usually for current needs.

Q. As a matter of custom and practice, does such a letter contain any conditions?

A. In our bank we state that the line of credit is subject to our satisfaction with the financial condition of the borrower.

Q. Your continuing satisfaction?

A. Our continuing satisfaction.

Q. I show you Exhibit FG for identification and ask you if that is a typical form of letter of credit letter in your bank?

MR. STITT: If your Honor please, this document --

Q Line of credit letter in your bank.

MR. STITT: This document is dated 1974. We are talking about events that occurred back in 1970, and with respect to commitments by banks involved in lines of credit other than Manufacturers Trust Company. I do question the relevance of this document.

MR. PIEL: May I reframe my question?

Q Is this a form of letter which was in use by your bank in 1959 and 1960 to extend a line of credit to a customer?

A. I am not sure that it was in use in 1959 and 1960.

Q Excuse me. If I said 1959 and 1960, I meant 1969 and 1970.

A. It is not a form letter in that it must be used for every line of credit granted. It is, however, the type of letter that was in use in 1969 and 1970.

Q Namely containing some expression to the effect that it is subject to the usual condition that Manufacturers Hanover will continue to be satisfied with the financial affairs of the company?

A. Yes.

MR. STITT: Objection to the question as leading.

THE COURT: Overruled.

Q. Is that correct?

A. That's correct.

Q. When you define line of credit to refer to that kind of an extension of a facility, is that generally true among lending commercial banks?

A. Yes, yes.

Q. If you will look again, please, at Exhibit B[illegible], the list that Mr. Sullivan told us about this morning showing the participants in various loans, you told us about your extending an unsecured loan for six months in December, $7-1/2 million.

Does that appear on this chart in the column called "Other Loans" under "Unsecured"?

A. Yes, it does.

Q. To the left of that, three columns over, is another column headed "Unsecured Bank Lines." If you will turn to the third page, you will see that that column totals $46.5 million.

Can you tell us, from your familiarity with the affairs of the company at the time, what that represents?

A. The unsecured bank loans?

Q. Yes.

A. Those were the loans that were outstanding at

this period, which was in early June of 1970, if my recollection is correct, loans that were taken down under lines of credit made available by these banks. It was my understanding they were made available initially as backup for the commercial paper of Penn Central.

Q Were they called stand-by lines at that time?

A That's correct.

Q Did there come a time when part of those lines was converted into swing lines, if you know?

A I don't know that they were called swing lines.

Q Demand lines?

A Again, I don't know what type of note was used by those banks.

Q All right. We will come in to that later with another witness.

You said it was originally $50 million?

A It was my understanding that the railroad had available $50 million in bank lines as backup for commercial paper.

Q And that at some point it took down actual loans under those lines, is that correct?

A Yes.

Q To the extent of 46.5?

A That's my understanding.

Q Did any of the banks who were participants in that stand-by line decline to honor the line?

A. It was my understanding that some banks did decline to lend.

MR. STITT: I object to testimony about this witness' understanding, your Honor.

THE COURT: Sustained.

MR. STITT: Either he has personal knowledge or he doesn't.

Q Did you know at the time, Mr. Sullivan?

A. I was told that banks declined to lend --

MR. STITT: Objection to what he was told.

THE COURT: Sustained.

Q Did Manufacturers Hanover, among its services to clients, purchase commercial paper for clients?

A. Yes, we did.

Q Did it make recommendations to clients with regard to the purchase of commercial paper?

A. I would like you to clarify the word recommendations.

Q Let me ask you to clarify it by telling us what you did with respect to assisting clients to purchase commercial paper.

A. We had what we call a short-term investment

center at which we made available quotes on commercial paper and other short-term securities for customers that wished to invest money on a temporary basis.

Q Did Manufacturers Hanover also purchase commercial paper for its own account or were all of its purchases for clients, if you know?

A. To my knowledge, we did not purchase for our own account.

Q Did you purchase Penn Central commercial paper for account of clients?

MR. STITT: May we fix the date, your Honor, and the corporation?

MR. PIEL: All right. There is only one corporation that issued the notes, Mr. Stitt, and we all know which one it was. It was called Penn Central Company at one time and on October 1, 1969 changed its name to Penn Central Transportation Company, the only issuer of commercial paper notes that I know of that had Penn Central in its name.

MR. STITT: I would like to have the time fixed as to when these purchases were made. Otherwise, I don't see any relevance.

Q In 1970 were purchases made by Manufacturers Hanover for clients of Penn Central commercial paper?

A. Yes, I understand that we did purchase for the account of others.

MR. PIEL: Your Honor, Exhibit CU shows a purchase by Manufacturers Hanover as late as April 7, 1970. That's the master computer run of transactions.

Q. I show you Exhibit FF for identification and ask you what that is. We have awfully illegible copies. The top line says "Commercial Paper List, Account Officer, Dealer," on the left it says "Name."

A. This is a list that the bank prepared for internal purposes for the guidance of the people in our short-term investment center. It is a list of commercial paper issuers. The category has a certain meaning.

The account officer is the officer that handled that particular relationship, if there was one, and the dealer, I assume, is the investment banker that was issuing the paper.

Q. Or was selling the paper in the short-term market?

A. Yes.

Q. Is this what is commonly called an approved list?

A. It has had a number of names over the years. At one time it was called an approved list of commercial

paper issuers.

Q We have apparently four categories.

Will you tell us what they were in 1969 and 1970?

A The meaning of the categories changed a number of times. I can't tell you without reference to some help what exactly was the meaning in '69 and '70 as to categories I think three and four.

Category 1 had the same meaning I think through the period '69 to the present, which meant that the paper is eligible for purchase in unlimited amounts for customers.

Q Number 2? When you say available for, you mean is approved for?

A Is approved for purchase in unlimited amounts.

Two, I believe at this time had the meaning, approved for purchase in limited amounts.

Q Three and four you say you have difficulty recalling?

A The meaning changed. At times it meant approved for purchase only after consultation with the account officer.

Q And on Page 4 we see that Penn Central Co., the issuer, Penn Central commercial paper by whatever name known from time to time was in Category 1?

A. Yes.

Q. Was it ever removed from Category 1 before June 1970?

A. No, it was not.

THE COURT: This is your bank's list?

THE WITNESS: Yes, your Honor.

MR. PIEL: I offer it in evidence.

MR. STITT: Objection solely as to relevance, your Honor.

THE COURT: What is irrelevant about it?

MR. STITT: We don't know what this bank was told by -- I will withdraw the objection, your Honor.

xxx (Defendants' Exhibit FF was received in evidence.)

MR. PIEL: Your witness.

CROSS EXAMINATION

BY MR. STITT:

Q. You testified that this bridge loan was negotiated in early February 1970.

A. Yes.

Q. In agreeing to participate in that loan, I take it you had no discussion with Goldman, Sachs.

A. That's correct.

Q. You had no way of knowing and you did not know

request and lend Pennsylvania Company 10 million on a short-term note unsecured at the prime rate. The take down would be in one to three installments from the middle of February to the middle of March."

Does that refresh your recollection now, Mr. Sullivan, that you did indeed know from Mr. Bevan himself about First National City Bank declining?

A Yes, it does.

Q And he didn't tell you what their business or other reason might have been, did he?

A He did not tell us the reason why they declined.

Q I also want to show you Defendants' Exhibit AL, a record memorandum regarding Penn Central Company, appearing to be from the files of the First National City Bank.

I am not going to ask you to read the whole thing. I want you to turn to Page 2. You see in the middle of the page above the date February 9, 1970 the words "Patrick F. Bowditch, Vice President," three places on that page there are typed -- two other places there are PFB and then there is a signed initial.

MR. STITT: If your Honor please, if this is another document that is being read from, perhaps it ought to be offered in evidence.

MR. PIEL: I am not reading it.

Q I am asking him whether he can by any chance from his dealings with the First National City Bank and Mr. Bowditch he recognizes that manner of initialed signature as being the signature of Mr. Bowditch.

A I am unfamiliar with the signature of Mr. Bowditch.

Q I want you please now to read the P.S., read it to yourself, not out loud.

(Pause)

A Yes, I have read it.

Q Does that by any chance refresh your recollection that you learned at some point or other that First National City Bank expressed a willingness to go along on the bridge loan if requested?

A No, I was never aware of that.

MR. PIEL: I think it is too peripheral, your Honor, for me to call Mr. Bowditch.

THE COURT: I agree.

MR. PIEL: That's all, your Honor.

RECROSS EXAMINATION

BY MR. STITT:

Q Mr. Sullivan, I am just going to draw your attention to these questions and answers that you gave at the Welch trial, Page 2397:

REDIRECT EXAMINATION

BY MR. PIEL:

Q I would like to show the witness Plaintiff's Exhibit F-76, 77 and 78 received by your Honor subject to connection. The three of them are alike, so this isn't a big job, I mean alike in form, anyway, three different dates. I will just ask you to note that they are signed by a Mr. Underhill.

Do you know who he was in the employ of the Penn Central System?

A. The name is familiar. I think he may have been the comptroller of the railroad.

Q And each one of these letters is addressed to -- well, it is addressed to Mr. Saunders, the chairman, but with copies to certain others, Mr. Gorman, the president, Bevan, the chief financial officer.

Are the other five known to you?

A. I have met some of them at one time or another.

Q I am not going to tax you with that because we had a witness who identified them and their positions.

Have you ever seen these -- did you ever see these in February 1970 when you were considering the bridge loan?

A. No.

Q Did you ask to be shown any such document?

A Such as these?

Q Yes.

A No.

Q What does it appear to you that the document is, not the letter, but the document that has been transmitted in the letter?

MR. STITT: If your Honor please, the witness is now being asked to speculate about a record of Penn Central which he has not seen before, which he did not prepare.

THE COURT: I will sustain that objection.

MR. PIEL: If your Honor please, may I state my purpose?

THE COURT: Yes.

MR. PIEL: That is offered to ask the Court to believe that if Goldman, Sachs had tried to get this information or it had inquired hard enough or often enough, it would have discovered facts in this document.

Here is a man who has dealt with scores and scores of borrowers, corporate borrowers and corporate officers in that connection, and I want to know whether he recognizes this type of internal document and if he can tell us whether this kind of document is ever made available

to bankers when they are negotiating loans or whether they get prepared material from the borrower.

THE COURT: I was wondering why Vogel wasn't asked the question. I assume Mr. Wilson is going to testify --

MR. PIEL: That's right, your Honor. Mr. Vogel wasn't at that meeting.

THE COURT: There is no use asking Mr. Levy because he had a peripheral involvement.

MR. PIEL: Mr. Vogel wasn't at the February 6 meeting when these matters were discussed.

THE COURT: The question is, is it usual to ask for it.

MR. PIEL: That's right. We are being held to some kind of a standard that Mr. Stitt has in mind, and I don't know what his standard is, but I am trying to find out what normal and ordinary practice is. I think this is an excellent opportunity to find out.

THE COURT: First of all, are you withdrawing your objection to the introduction of the documents?

MR. PIEL: No, your Honor. Your Honor has received them subject to connection and I am laying the basis for their being excluded.

MR. STITT: I don't believe that's a correct

statement of the record, your Honor, and I still say this witness, the question is what Goldman, Sachs could have commanded of Penn Central. This witness was not at the meeting of February 6 and he had not been part of the Goldman, Sachs organization when its relationship with the railroad was going on. I suggest his testimony would be most speculative.

THE COURT: He is a fellow who approves millions of dollars of loans. Don't you think there is a sort of a standard of what you can get if you ask?

I will overrule the objection.

Q Mr. Sullivan, you have heard from my explanation to the Court what my question is, and I will put it to you, first of all I want you to tell us from looking at it what kind of a document it is in terms of the running of a railroad or a corporation.

A. What it seems to be is a weekly report to the top management of the railroad on the current operations of the railroad, comparing them to the financial plan and to the actual results of the year before and setting out any variances from the forecast, the plan and the actual results of the year before.

Q You will note that all three dates are within the first quarter.

A. Yes.

Q. And that each time there is a new report, it changes the guesses, if I may call it that, as to how the first quarter is going to turn out?

A. Right. I would guess that it is an updating of the forecast based on --

Q. Based on some more information?

A. Based on current results, yes.

Q. And subject to whatever else is going to happen before the end of the quarter; isn't that right?

A. That's correct. That's what I would imagine.

Q. That's the way it appears to you.

I ask you, do corporate officers in coming to you to explain their requirements and their plans for meeting them acquaint you with that kind of internal management document?

A. It is very unusual.

THE COURT: Do you ask for such type of information?

THE WITNESS: Your Honor, only when we are in what I would call a workout situation or a credit which shows extreme strain.

Q. A workout situation is where the debt has matured and not been met?

THE COURT: Wait, wait, ask the witness to tell --

MR. PIEL: I was asking.

THE COURT: No, you are making a statement as to what it is. Ask the witness. He is the expert, not you. You are just a lawyer.

MR. PIEL: That's right.

A. A workout situation is a company that is unable to meet maturities as they occur which, of necessity, must then work very closely with its banks to pay off that debt without recourse to a bankruptcy court.

Q. That's the time when you expect to see this kind of document?

A. Yes. We feel we can ask for it, current figures of the most confidential nature, and that there should be no hesitancy on the part of the management to provide them.

Q. Is it the normal course that they present you with whatever figures they are bringing to your attention in order to explain their situation and that they prepare that for you for the purpose of the discussion?

A. I am sorry, I really don't understand the question.

Q. If they are coming to you to discuss their financial requirements and their plans, they come prepared

with information to present to you of what they think they should present to you to put you in a position to judge their credit; is that correct?

A. Are you talking generally or about --

Q. I am talking generally, as a matter of general practice and experience.

A. Yes, I would have to agree, yes.

THE COURT: I now admit 76, 77 and 78.

MR. PIEL: May I be heard on that, your Honor?

THE COURT: No. You cannot have it both ways, Mr. Piel.

MR. PIEL: Your Honor, I have tried --

THE COURT: I know what you are trying to do, but they are in, so I can now draw a conclusion from the witness' testimony. If they weren't in, I couldn't draw any conclusion from his testimony, I would have to strike his testimony.

MR. PIEL: Very well, your Honor.

THE COURT: Are you finished with him?

MR. PIEL: Yes, your Honor.

MR. STITT: Just a couple.

THE COURT: You are in the middle of one of these typical lawyer deals of who gets the last question.

Go ahead, Mr. Stitt.

D. DEPOSITION TESTIMONY

Deposition Testimony of Robert P. Anczarki

Page 20

1130a

A I might be asked what the net worth of a company was, or what bank lines were, and if the company was rated by NCO.

They were the most common questions, I would assume.

Q Was there anything else that investors wanted to know?

A No, not that I can remember.

Q Earnings?

A Very rarely.

Q Working capital?

A Not that I can remember.

Q Cash flow?

A Not that I can remember.

Q Liquidity?

A No, not that I remember.

Q Debt-equity ratio?

A Not that I can remember.

Q Current ratio?

A No, not that I can remember.

Q Is it your testimony that you do not recall having been asked by investors about earnings, working capital, cash flow, liquidity, debt-equity ratio or current ratio at any time?

Deposition Testimony of David C. Bevan

Pages 44-47
Pages 57-58
Pages 170-173
Pages 185-186
Pages 213-214

MR. GERMAN: Answer it.

A. The one hundred million was contemplated in The Pennsylvania Company.

BY MR. MANEY:

Q. Now, the memorandum refers to a meeting --

A. To that extent, this memorandum is wrong.

Q. The memorandum, Plaintiffs' Exhibit No. 6, refers to a meeting that had occurred "yesterday", which would be February 5th, with The First National City Bank, Chemical, Irving, and Mellon .

Do you have any recollection of having met with representatives of those banks in early February, 1970?

A. Yes. I couldn't tell you if it was February 5th or not, but I remember meeting with and talking to them.

Q. Do you remember what the substance of the conversation was?

A. The substance of the conversation was to arrange what we called a "bridge" loan.

We had done the same thing in the fall of 1969, and that was a -- we were going to

borrow fifty million in anticipation of the one hundred million Pennsylvania Company financing, and we subsequently did borrow fifty million. We called that a "bridge" loan, in other words, bridging the gap between the time we decided to finance and the time we actually got the proceeds.

Then, with the proceeds of the one hundred million, we would repay the fifty million. That was the plan.

Q. Can you recall specifically a meeting with a representative or representatives of The First National City Bank?

A. Well, I recall, as I said, a meeting with First National City Bank --

Q. Do you recall whether First National City Bank was willing to participate in a bridge loan?

A. First National City wanted us, in consideration of that, to change the terms of our revolving credit, as I remember.

And I said from a corporate standpoint, I didn't think I could legally do it because no consideration was involved. This was a

loan for The Pennsylvania Company and had nothing to do with the Penn Central. Therefore, they asked would I think it over and later on said they would want to change the terms.

I said no.

So I went to Chemical, as I recall, and I think Manufacturers Hanover and explained that we had a difference of opinion with The First National City and I still wanted the bridge loan, and they made it for us.

Q. Do you recall if you advised representatives of any of these banks -- First National City, Irving, Mellon, or Manufacturers Hanover -- of the 1970 budget of the railroad?

A. Whether it was at that meeting or later I can't tell you, but we advised the commercial bankers, the investment bankers, and the commercial paper dealers of the -- of our budget for 1970.

Q. Do you have any recollection of having discussed with any representative of Goldman Sachs, whether it was on February 6 or sometime in early 1970, the possibility of increasing the bank line

coverage --

A. Yes.

Q. -- on the commercial paper?

A. Yes. I can't tell you whether it came to me directly from them or whether by way of John O'Herron.

But they thought, as a precaution, being conservative, that we could -- and they also said that they had some buyers who had a rule that they would only do -- buy any of your commercial paper where there was a hundred per cent coverage, so they thought that would improve our market and that this was the conservative thing to do.

We said with the tight money market and everything else, that we didn't think that it would be -- we thought it would be difficult to get this additional thing right then.

They suggested going into the Eurodollar market, and when the information was passed on to me -- I don't remember if it was done directly or through O'Herron -- I said I didn't think that altered the problem to any extent, to get an explanation

tell you approximately. That would be -- I think it was about April 20th.

I think the statement was issued around the 22nd. I think it was about April 20th.

I know that I was completely stunned, and I remember Mr. Saunders looking at my face and saying, "Is this going to affect The Pennsylvania Company offering?"

And I said, "I'm so stunned and shocked, I am not in a position to evaluate anything until I get over the shock."

That was the preliminary statement, which I think was on the 20th, which was firmed up and immediately issued to the public.

Q. Do you recall whether, prior to that date, you had any indication of the quarter's results?

A. Well, let me say this: We probably had the worst weather -- at least, the operating people say it, and I have no statistics from which to speak -- in February and January in the history of the railroad, and the yards were tied up for days at a

time. Our expenses went up, and our revenues went down.

But we -- so we -- we knew we had a tough time there, but the operating people said we were going to show a lot of increased efficiency in March, and the sales people were very optimistic.

They said, "There is an awful lot of business backed up that didn't move in January and February because of the weather."

Both the operating and the sales people indicated that we were going to have a very good March, a very good March.

And I, my own guess was, mentally and I think I -- I think I indicated it to all of the commercial bankers, the investment bankers, and Goldman Sachs--that I thought our loss was going to be a little larger than the first quarter than we had budgeted. I was thinking in terms of -- I didn't tell them this -- in terms of maybe five- to seven million, but I didn't think it was catastrophic. But this was based upon information I got from our

MR. MANEY: I think, with the reproduction, the fact is that we frequently do not have documents that were stapled together in their original condition calls for a more precise description of each page.

MR. POLLACK: Off the record.

(Off the record discussion)

A. I have no way of knowing three or four years later whether I received a particular piece of paper or not, and I think --

BY MR. POLLACK:

Q. Do those documents --

A. It is an unreasonable question. I don't know whether I did.

Q. Did you receive documents in that form in the years 1969 and 1970 as a matter of regular practice?

A. Well, I don't -- I have no way of -- I don't know what "financial plan A" means, to start with. There was only one financial plan, as far as I recall. If there was some explanatory memorandum accompanying it, now -- but this was done in --

February 6th,-- I suppose this was -- I don't know -- I suppose that this was while we were still working on finalizing the budget -- I am talking about PB-9 -- while we were still finalizing the budget and trying to figure out which way to go on various things, but I can't -- I don't know --

Q. But do you recall having received documents in this form?

A. That is not a regular document. It is not a regular document I --

Q. Mr. Bevan, I am going to show you O-4 and ask you if that is a regular document?

MR. MAHEY: I object to that. I don't know what you mean by "regular document".

A. This is not a regular document, either, because basically we would put down statements in detail, and I have no recollection of ever seeing this.

BY MR. POLLACK:

Q. O-4?

A. I have no recollection of having seen it.

Q. Merely so the record will be clear, my

question is whether you recall receiving documents in the form of PB-9, -10, and -11 at or about that time?

A. Well, as I say, I have no recollection, and they are in not what I remember as the regular form.

Q. Okay.

A. A lot of documents were prepared and never distributed because things changed.

MR. GERMAN: Do you have any questions on these?

MR. POLLACK: No. I don't.

MR. GERMAN: Okay. Give them back to him.

BY MR. POLLACK:

Q. Did you ever refuse any requests for information put to you by Goldman Sachs?

A. I cannot answer that question. I have refused many, many times to give any number of people information when I didn't think under S. E. C. regulations would be proper to do. I don't remember any improper requests, and I don't remember any

refusals for Goldman Sachs, but I have refused many people because I thought it was inside information and I couldn't give it out.

MR. POLLACK: Off the record.

(Off the record discussion)

BY MR. POLLACK:

Q. At the time you engaged Goldman Sachs or commenced your dealer relationship with Goldman Sachs on commercial paper, had you then solicited any other dealer in commercial paper?

A. I testified on that this morning, but I am glad to repeat.

As I said, in '65 or '66 Gerstmeier reviewed the whole commercial paper picture with Goldman Sachs.

I don't think that I personally came into it at all at that time. I just got reports from him.

Then, because of a change in rate structure, we decided it wasn't worthwhile at that time or beneficial for us to go into it but that at some time we would, and I guess it was the --

A. Williams wasn't there; and if I recall, I said, well, I asked if Arthur Dean was there because presumably I asked it of him, but he was away on vacation or something, and I couldn't talk to him, and so much else came out that was inaccurate and everything else that we just dropped it.

Q. Was the meeting at Cromwell, Sullivan & Cromwell, at your request?

MR. GERMAN: At mine.

A. There is nothing new about this. It is all a matter that is written up in either the S. E. C. or patent report -- I forget which -- or both.

MR. POLLACK: Off the record.

(Off the record discussion)

MR. POLLACK: Please mark these two documents PB-12 and -13.

(A document entitled "Working Capital Position As Of December 31, 1968", dated February 18, 1969, from the files of Penn Central, was marked Exhibit PB-12 for identification.)

(A document entitled "1968

Cash Loss", from the files of Penn Central, was marked Exhibit PB-13 for identification.)

BY MR. POLLACK:

Q. PB-12 is a document entitled "Working Capital Position As Of December 31, 1968" and dated February 18, 1969, and is from the files of Penn Central.

I ask you whether that document accurately reflects the working capital position, as you understood it, at that time?

A. I can't tell you. What it was is a matter of record in the annual report, and I don't know whether -- I would imagine by February 18th they would have the right figures, but I can't specifically tell you now. But it is a matter of record in the annual report.

Q. Have you seen that document, PB-12, prior to today?

A. To the best of my recollection, no, but there is so much financial information on the railroad.

Q. PB-13 is a document from the same source

because it wasn't their -- they couldn't -- they couldn't get --

BY MR. TROTTER:

Q. Did you ever show Goldman Sachs your budget?

A. As far as I know, we never showed anybody our budget.

Q. Did Goldman Sachs ever ask to see your budget?

A. I have no recollection of their asking me, but I would have -- I would have -- before I did anything, I would have asked the legal department, and I am quite sure they would say it was inside information. Companies don't publish their budgets, and I couldn't give you one without giving one to everybody. I am sure that would be improper. I never saw a company yet that published its budget to its stockholders. And if you give it to one person, then you are in trouble if you don't give it to others.

Q. Did you ever publish a synopsis of your budget or short-form budget?

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A. No, and I don't think I have ever seen this done by any other company.

Q. Did you take any prepared writings with you when you had your meetings with Goldman Sachs in the spring of 1970, at which time the budget was discussed?

A. (Shaking head)

MR. GERMAN: I object.

A. I couldn't possibly remember. The kind of figures I would -- would be able to give them, I or O'Herron would have in our heads. I just testified before we indicated to the banks and to Goldman Sachs that we were budgeting on the basis of 1969 results, that we thought that the first quarter -- after we had a couple of bad months, we told them -- and I am sure we told a lot of people -- because it was general knowledge -- that our results would be worse than anticipated in the first quarter because of the bad weather.

Q. But I asked you --

A. We told others.

Q. Excuse me.

Deposition Testimony of Paul K. Brenkert

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Page 9

EXAMINATION BY

MR. POLLACK:

Q. Mr. Brenkert, what is your home address?

A. 541 Beauford St., St. Louis, Missouri.

Q. What is your office address?

A. 10 Broadway, St. Louis.

Q. Are you employed by Goldman, Sachs & Co.?

A. Yes, sir.

Q. In what capacity are you employed by Goldman, Sachs & Co.?

A. A commercial paper salesman.

Q. Are you an officer of Goldman, Sachs & Co.?

A. No, sir.

Q. How long have you been employed by Goldman, Sachs & Co. as a commercial paper salesman?

A. I joined the firm in October of '69.

Q. Please state briefly for the record your educational background.

A. I am a high school graduate of Grosse Point High School, Grosse Point, Michigan, and I have a Bachelor of Science from the University of Detroit, Michigan.

Q. Please state briefly for the record your occupational background?

A. Prior to my joining Goldman, Sachs & Co., I spent five and a half years with Chrysler Corporation.

Q. In what capacity?

A. Various capacities from starting as a trainee with the corporation through budget profit plan and accounting unit as a supervisor and ultimately with the treasury staff of Chrysler Financial Corporation.

Q. Did you have anything to do with commercial paper in your years at Chrysler?

A. Yes, sir.

Q. Please state what you had to do with commercial paper?

A. I was assistant to Donald Freudenheim, the assistant treasurer of Chrysler Financial and in my capacity as an analyst, I did market studies as to sources of funds, statistical reports as to primary changes and things of this nature.

Q. Did you buy commercial paper for Chrysler?

A. No, sir.

Q. Did you sell commercial paper for Chrysler?

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in a newspaper that might be of interest to a customer because he would be the purchaser or intending to be the purchaser of an issuing company, obviously we would bring it to their attention so they were aware of what was going on.

Q During the period of time in which you were a commercial paper salesman, did nonpublic information about the issuers whose paper you were selling come into your possession?

A No, sir.

Q At no time?

A No, sir.

Q Did you receive any credit questions from your customers?

A Very often.

Q Can you state the nature of the credit questions that you received from your customers?

A It could have been ratings by NCO; it could have been questions about senior debt rating; recent earnings.

Q Bank lines of credit?

A I recall having been asked that question.

Q Current assets and current liabilities?

A Yes, I have been asked about those.

Deposition Testimony of G. Clifford Coleman

Pages 112-114

not particularly certain which one it was.

Q. At no point in time were you ever primary salesman for Union Bank?

A. Not to the best of my knowledge -- no -- best of my recollection.

Q. Did you ever sell the Union Bank non-prime paper -- non-prime commercial paper?

A. Not to the best of my knowledge.

Q. To the best of your recollection, approximately how many different sales of commercial paper did you make to the Union Bank?

A. I can't remember that.

Q. Would you say it was more than ten?

A. Again, it may very well have been but we are talking about a specific period of time and they were taken out of a bunch of -- a longer period of time.

Q. To the best of your recollection, you sold prime paper to the Union Bank, is that correct?

A. Yes.

Q. What do you mean by prime?

A. NCO rated -- with that designation -- prime.

Q. In your dealings with the Union Bank, did they ever tell you what their investment guidelines were?

A. I don't remember them doing so.

Q. Do you know if they had any investment guidelines?

A. I don't know for a fact.

Q. Do you know if they had an approved list?

A. I don't know.

Q. Well, could you just give me the general conversation you would have when Union Bank called you with respect to commercial paper or you called them?

A. If I called them I would tell them that the particular rates that were in effect for the different types of issuers, such as finance companies, and I would tell them what the general rates were for the industrial issuers; if there was a difference, tell them what the particular rates were for public utilities, and I might also pick out a particular name or something that I knew that the bank particularly liked.

Q. Do you recall any names that the bank particularly liked?

A. May Department Store.

Q. Any others?

A. Again, it might be a point that was after our point of reference, but American Express Credit was a name that we subsequently started issuing the paper through the Union Bank and they also used a lot of that paper for their customers.

Q. Was it your understanding again with the Union Bank that they were only interested in prime commercial paper?

A. I took that to be their -- I took that to be, yes, to be their one -- if any parameter, that would be one.

Q. Why did you take that to be one of their parameters?

A. It is general practice for a money market bank dealing for themselves or for the account of their customers -- unless there is a specific knowledge of an individual account -- they would deal that way.

Q. Is this something you learned while you were employed by the United California Bank?

A. No.

Q. Well, when did you first learn of this general custom?

A. Through experience with -- by mentioning all the names they had, seeing which were accepted and which ones weren't.

Q. You were aware on or about March 19, 1970 the Union Bank purchased $600,000 of Penn Central commercial paper from Goldman, Sachs?

A. Yes.

Q. And did you handle that sale?

A. Again, as I mentioned before, they called in already knowing the particular piece they wanted and in a way it showed someone else, you know, had gone and told them about the particular item. All I did was call New York and get the figures and things for them and confirm the trade. So that had been done.

Q. Is it your testimony that on that day that you took the order there was a previous telephone conversation with Union Bank and someone else at Goldman, Sachs San

Deposition Testimony of John E. Corrigan

Pages 5-7
Pages 12-14
Page 23

about that period of time.

A I understand.

Q Would you describe briefly what your functions were in Division G at that time?

A I was responsible for credit extended to a group of industries, particularly transportation and utilities.

Q In that position were you responsible for loans to Penn Central?

A Yes.

Q Were you responsible for the bank's participation in the three hundred million dollar revolving credit agreement?

A Yes.

Q What was the bank's participation in that?

A We had a fifteen million dollar participation.

Q Did the bank also have an unsecured line of credit to the railroad?

A Yes.

Q Do you remember what amount that was?

A Five million.

Q Did the bank also have a participation

in a fifty million dollar Eurodollar line of credit?

A Yes, for all or most of that period in question.

Q Do you recall what the size of the bank's participation in that was?

A Eight million, I believe.

Q Were all of those loans outstanding at the time of the reorganization of the railroad?

A Yes.

Q Did the bank have any other loans to the railroad on the date of the reorganization?

A No.

Q Will you describe briefly, Mr. Corrigan, how, in the ordinary course, you reach a judgment as to whether or not to loan money to a customer of the bank that was in your Division during that period? In other words, what information do you take into account and what do you do with it?

A Normally we look at the financial condition of the company and at its management, and make a judgment.

Q What information in the way of financial data do you obtain from a company in doing that?

A Normally its annual audit and interim

statements, if there are any available.

Q Does someone at the bank make spread sheets from that information for the purpose of analysis?

A Yes.

Q What is the relationship between a Division, such as the one in which you worked during that period, and the Credit Department of the bank?

MR. FEELEY: I will object. Be more specific.

MR. GRAHAM: If the question is too broad, let me try and rephrase it.

BY MR. GRAHAM:

Q What functiondid the Credit Department perform in the analysis of a potential borrower who was a customer of your Division?

A Sometimes no part and sometimes some. Normally we seek from them information if we do not have it and ask them to get something.

They act as an amanuensis occasionally to get data or seek information for us. Usually we do not talk to them if we have the information available directly. It kind of varies.

Q Was a file maintained in Division G on

would you have sent it to the credit file?

A Yes.

Q Do you remember a discussion of whether or not the railroad would have a deficit in its sources of cash for the coming year?

A I don't remember.

Q Do you remember any discussion of the railroad's cash needs?

A No, but I know they were looking for more money, so I presume it must have come up.

Q What had the bank's participation been in the hundred million dollar revolving credit agreement?

A I do not know. I think five million.

Q I take it the bank decided to expand the size of its participation when the revolver went to three hundred million?

A Yes.

Q And you say it went to fifteen million dollars, is that right?

A Yes.

Q At the time that decision was made to extend additional credit to the railroad, was a credit judgment reached as to whether or not the

railroad was creditworthy?

A Yes.

Q I take it that you concluded that the railroad was creditworthy at that time?

A Yes.

Q Subsequent to the time when the revolver was expanded to three hundred million dollars, did you and those working under you continue to follow the credit of Penn Central?

A Yes.

Q Did you at any time before June 21st, 1970 reach the conclusion that the railroad was not creditworthy?

A What date?

Q The date of the filing of the petition for reorganization, June 21, 1970.

A Now, would you repeat the question?

MR. GRAHAM: Will you read the question, please, Mr. Youker.

Q (Read by the Reporter.)

BY THE WITNESS:

A Immediately before that date there was a discussion of a possible V-loan, immediately before a couple of weeks before, and at that time it became

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apparent to us that there was serious trouble around somewhere.

Q Did you attend a meeting on or about May 28, 1970, at approximately the time when the railroad announced the postponement of the Pennco debenture offering, a meeting which was called by First National City Bank?

A No.

Q Were you aware of the existence of that meeting?

A Yes.

Q Did someone from the bank attend it?

A Yes.

Q Who was that?

A Marvin Juliar.

Q Did you make a memorandum of the meeting?

A I don't know.

Q Did he report back to you on the content of the meeting?

A Yes.

Q Do you remember what he said?

A There was talk of a V-loan credit.

Q Anything else that you remember?

A That there would be a subsequent meeting

size.

Q Why would that be?

A Because normally, under a revolving credit agreement there are stated covenants as to what date it must be provided, and if that date is met, that normally is it.

Q That would include earnings records but not earnings projections in this case, would it not?

A Yes.

Q You concluded that that was a sufficient basis for your credit analysis?

A Yes.

Q Do you recall the fact that first quarter earnings were announced and that there was a substantial loss for railroad operations of approximately sixty-two million dollars announced? That was in April.

A I knew it subsequent to that date. I do not know when I knew it.

Q I take it even after hearing that announcement, the bank still concluded that Penn Central was creditworthy?

A Yes.

Deposition Testimony of Michael L. Evans

Pages 57-58

Q Did you ever recommend to anyone in the Credit Department that Goldman, Sachs & Co. not continue to handle the commercial paper of any issuer?

A No.

Q Did Penn Central have any financial problems during the time that you were covering it as a credit analyst?

MR. MANEY: Would you define what you mean by financial problems, Mr. Pollack?

Q Were there any problems that you saw as a credit analyst in Penn Central at the time that you were covering it as a credit analyst?

A That's very vague and hard to answer.

Q Any problems of any kind.

A Of course. There was always problems in every company that I analyzed, always something that's --

Q What were the problems in Penn Central?

A Specifically I couldn't tell you.

Q Was there a liquidity problem in Penn Central?

A I don't remember.

Q Was there a situation of delinquent earnings?

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A ~~Yes.~~ SINCE I CANNOT UNDERSTAND THE USE OF THE WORD "DELINQUENT" IN THE QUESTION, I CANNOT GIVE ANY ANSWER PAGE

Q Was there a situation of over-reliance on borrowed money rather than equity?

A I couldn't give an honest answer. Remembering, you know, what the exact situation was of Penn Central when I reviewed it.

Q Was there a cash flow problem in Penn Central?

A I don't know. It's easier to say yes, but I am not specific -- I don't want to give an answer that's so vague and say just, no, there was some type of cash flow problem. Big companies like that always have problems. You are asking specifically, and I can't tell you because I haven't looked at the company in two and a half years.

Q During the time that you were covering Penn Central as a credit analyst was there a tight cash position?

A I don't know. I tend to think there was a cash tightness but I can't give you an honest answer and say yes.

Q Was there a negative working capital position at Penn Central?

A Yes.

Deposition Testimony of Carl A. Frederickson

Pages 90-92

subject to the recall provision.

However, there are other counsel present who I am advised wish to place certain questions to the witness.

MR. BREINDEL: I have to rush and I would appreciate it if you would give me priority.

MR. LEAMAN: Yes.

EXAMINATION BY MR. BREINDEL:

Q Mr. Fredricksen, did you ever have any dealings with the University Hill Foundation?

A No.

Q Did you ever have any dealings with Howard Fitzpatrick?

A No.

Q Did you ever have any dealings with the Union Bank?

A Yes.

Q Over what period of time?

A Ten years.

Q Were your dealings basically with respect to selling commercial paper to the Union Bank?

A Yes.

Q What individuals did you deal with at

the Union Bank?

A Noel Le May.

Q In your dealings with the Union Bank did you ever discuss University Hill Foundation?

A No.

Q Do you know whether the Union Bank ever had any investment guidelines?

A No.

Q Did they ever tell you that they were only interested in prime commercial paper?

A Not specifically, no.

Q Did they ever tell it to you generally?

A It never came up. I believe they had an approved list of names for their own portfolio and we didn't have -- possibly one name on that list.

They bought for customers, and I think that is a different story completely.

Q In purchasing for customers did they have any investment guidelines?

A Not that I was aware of.

Q To the best of your knowledge, in purchasing for customers did they ever buy commercial paper which you would not regard as prime?

Deposition Testimony of Robert Hansell

Pages 3-8
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ROBERT HANSELL, a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. POLLACK:

Q Mr. Hansell, what is your home address?

A 1096 North Fisher Lane, Winnetka, Illinois 60093. (Now 1422 Forest Avenue Evanston, Illinois 60201)

Q Will you also please state your business address for the record?

A Yes. Goldman, Sachs & Co., 135 LaSalle Street, Suite 911, Chicago 60603.

Q Are you employed by Goldman, Sachs & Co.?

A Yes.

Q How long have you been employed by Goldman, Sachs & Co.?

A Since June of 1968.

Q In what capacity are you employed by Goldman, Sachs & Co.?

A As a fixed income sales representative.

Q Can you explain what you mean by the term?

A Yes. I am responsible for selling short-term fixed income securities that are offered by Goldman, Sachs & Co.

Q Can you elaborate on what those securities

would be? U.S. government and

A Yes. Federal agency securities, commercial paper, certificates of deposits, tax-exempt securities such as project notes, Government guaranteed project notes.

Q In the Chicago office of Goldman, Sachs, is commercial paper handled as part of a larger department comprising the fixed income securities?

A It is now.

Q At what point in time did it become so?

A Approximately January of this year.

Q Prior to that time, did you work exclusively in commercial paper?

A Yes, sir.

Q Did you do anything else at Goldman, Sachs & Co. between 1968 and 1971 other than sell commercial paper?

A No, sir.

Q Will you please state briefly your occupational background?

A The first job I had, formal job I had was as a cashier at the A & P Supermarket in Highland Park, Michigan, which is a suburb of Detroit. It was a part-time job.

While I was attending school, I became employed by the Chrysler Corporation at their Hamtramck assembly plant, working in their General Ledger Department, in a clerical capacity. I was promoted to their corporate headquarters in Highland Park and given the opportunity to become a marketable securities investment clerk in Chrysler Corporation's Banking Department. The nature of that job was to book investment transactions made by the manager of the Securities Investment Department, who ran Chrysler's short-term portfolio.

I was then promoted to become a marketable securities analyst, and I analyzed investment opportunities in the short-term money market for Chrysler Corporation, including analysis of commercial paper issuers, which were offered to Chrysler Corporation by the so-called direct-issuer industry and the dealer industry.

This was a credit analysis capacity, essentiall

I was then promoted to the marketable securitie manager's position, and in that capacity I ran Chrysler Corporation's short-term domestic portfolio and represented Chrysler Corporation to an important segment of the financial community.

When I left Chrysler Corporation, at which

time I was solicited by Goldman, Sachs & Co. to come to work for them. I managed a portfolio that amounted to over a half billion dollars in short-term securities for the Chrysler Corporation.

Q Did that include both direct issuer and dealer in commercial paper?

A It did. I bought a good deal of the dealer paper from Goldman, Sachs & Co. as well as other dealers in the Street, and I developed a close working relationship with Goldman, Sachs & Co. This is what led to their soliciting me for employment.

Q In your work as an analyst of short-term investment opportunities, especially commercial paper, what factors did you take into account in determining whether or not to buy commercial paper for Chrysler Corporation?

A Investment guidelines established by the Finance Committee for the Chrysler Corporation board of directors.

Q Can you state the guidelines?

A To the best of my memory, they included arbitrary guidelines such as prime rated commercial paper, a record of profitability for each issuer over the last three years, minimum size requirements for the issuer.

depending upon the kind of issuer. For industrial companies, it was $100,000,000 in net worth, $200,000,000 in assets, $50,000,000 in after-tax profits; certain key credit ratios, such as a two-to-one current ratio, a one-to-one quick ratio or ~~asset~~ acid test analysis; maximum total ~~data~~ debt of no more than one hundred per cent of net worth; submission of all commercial paper issuers that we analyzed for our investment consideration to at least two of Chrysler Corporation's line banks for review and comment; long-term senior debt ratings of single-A or better; ~~Depth~~ debt service coverage analysis; and ~~o~~other standard industry ratios.

Q Can you mention other standard industry ratios?

A I have mentioned all of those pertinent ratios which I can remember having analyzed commercial paper issuers.

Q In your analysis of commercial paper issuers, did you examine bank lines of credit?

A Yes; we did. We did not, however, have a guideline that insisted upon one hundred per cent full line coverage.

Q Can you define what you mean by the term "current ratio"?

A Yes. The ratio you obtain by dividing curren liabilities into current assets.

Q Can you explain what you mean by the term "quick ratio"?

A Current assets including cash and marketable securities or "near money" less inventory divided by current liabilities.

Q In your years at Chrysler in their commercial paper activities, did you ever sell commercial paper back to a dealer?

A No. NEVER.

Q Please state briefly your educational background.

A I was graduated from Wayne State University in December of 1967 with a liberal arts major, business administration, a B.A. I do not have a master's degree.

Q Did you proceed from there directly to Chrysler Corporation?

A I was employed by Chrysler Corporation while attending school.

Q Can you state the dates of your employment by Chrysler Corporation?

A I don't remember the specific date that I was hired. I was with Chrysler Corporation for about two, two and a half years.

reorganization. The Penn Central Transportation Company's financial difficulty was being touted about in the press, and I may have also referred these two investors to our senior partner in New York and to Bob Kleckner, our in-house counsel.

Q Who is the senior partner in New York?

A Robert Wilson.

MR. KAZON: Would you read the question?

(The pending question was repeated by the reporter.)

Q Did you have any credit questions about Penn Central from either Beedlow or College Life prior to the time they purchased or at the time that they purchased the commercial paper of Penn Central?

A No.

Q Did anyone else to whom you offered commercial paper of Penn Central ask credit questions about Penn Celtran which you then referred to Jack Vogel?

A Yes.

Q Who?

MR. GRAHAM: I instruct the witness again he need not reveal the names of Goldman, Sachs & Co. customers. I would not object to a question calling for the substance of the conversation, without the

revealing of the names, Mr. Pollack.

Q Did these people who asked credit questions prior to purchase and whom you referred to Jack Vogel then purchase Penn Central commercial paper or not purchase Penn Central commercial paper?

MR. GRAHAM: I object to the form of the question.

You may answer.

A I do not know. I do not remember.

Q Is there any way you would have of refreshing your recollection on that question?

A We maintain confirmation files in our offices that state the date investors purchased notes from us.

Q Is there any way you could determine which investors you offered Penn Central to and then referred them to Jack Vogel for further credit information?

A Not to my knowledge. I offered Penn Central Transportation Company commercial paper to many investors.

Q Did many of them turn it down?

MR. GRAHAM: I object to the form of the question.

You may answer.

A No.

Q Did most of the investors to whom you showed

or offered Penn Central commercial paper buy it?

A When against other commercial paper issuers which I offered the same investors, they chose to buy it.

Q How many investors would you say you sold Penn Central commercial paper to in 1970?

A Twenty-five, thirty. I don't know for certain. That is a guess.

Q Can you state the nature of any of these credit questions about Penn Central which you received and then referred to Jack Vogel?

A I remember receiving questions from investors about Penn Central Transportation Company commercial paper and other commercial paper issuers regarding bank line coverage, and I was unable to answer those questions and I referred them to our Credit Department.

Q Is there any information which was in the possession of Goldman, Sachs & Co. which you were not supposed to disclose to your investors?

A Not to my knowledge.

Q Did Mr. Thomas or Mr. Johnson or anyone else at Goldman, Sachs & Co. ever tell you that there were credit files maintained on commercial paper issuers which contained information which you were not supposed to dis-

Deposition Testimony of Robert L. Harre

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ROBERT L. HARRE, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. POLLACK:

Q Mr. Harre, what is your home address?

A 1660 Forest View, St. Louis.

Q What is your business address?

A Ten Broadway.

Q Is that in New York City?

A St. Louis.

Q Are you employed by Goldman, Sachs & Co.?

A Yes.

Q How long have you been employed by Goldman, Sachs & Co.?

A Since October 1968.

Q In what capacity are you employed by Goldman, Sachs & Co.?

A Commercial Paper Salesman.

Q Were you employed by Goldman, Sachs & Co. in any other capacity?

A No.

Q Have you ever performed any function for Goldman, Sachs & Co. other than as a Commercial Paper Salesman?

A No.

Q Please state briefly for the record your educational background.

A I have a Bachelors in Business Administration from Washington University, St. Louis, and also an MBA from it.

Q Please state briefly for the record your occupational background.

A Prior to Goldman, Sachs & Co., I was with Monsanto Company in St. Louis in the Trading Department as a Banking Relations man and prior to that for one year, I worked for Allied Mills in Chicago, it is a cattle feed stock company.

Q Are you an officer of Goldman, Sachs & Co. presently?

A No.

Q In your work at Monsanto, did you have anything to do with commercial paper?

A I did.

Q Can you state what you had to do with commercial paper?

A I invested the short term funds of the company.

Q And your work at Allied Mills, did you have anything to do with commercial paper?

A No.

MR. POLLACK: Read the last two questions.

(Record read.)

Q For what period of time were you at Monsanto?

A Four years.

Q From 1964 through 1968?

A Yes.

Q Did you deal with Goldman, Sachs & Co. in your purchases of commercial paper while at Monsanto?

A No.

Q Did you deal with Lehman Brothers?

A No.

Q Did you deal with A. G. Becker?

A Not in commercial paper.

Q Did you deal with First Boston?

A No.

Q Did you deal with Salomon Brothers?

A Not in commercial paper.

Q Did you have transactions with any dealer in commercial paper while at Monsanto?

A No.

Q Would it be correct, then, to conclude that your purchases with them were all direct issuers of paper?

mentionad as such.

Q Did any of your active customers have cash flow guide lines?

A Not to my knowledge.

Q In dealing with your customers, can you state what information it is that they wanted to know about the commercial paper that you were offering?

A Generally, did the paper have any NCO rating and what the rate was.

There may be specific questions, but generally, at that point in time, this was all investors asked.

Q Can you state what other types of information investors asked for from you?

A I guess the next most common question is, what is the company's net worth, and after that, I could not put any priority or any significance as to the questions, the frequency that the questions were asked, but certainly such things as current assets, current liabilities, earnings, the amount of long term debt, the ratings and only very infrequently a question about bank line coverage.

Q Is there anything else that customers

Deposition Testimony of Robert L. Hoffmann

Pages 36-42

A Yes.

Q As a credit analyst, when you prepared this review did you have any concern about the ability of Penn Central Transportation Company to meet its short-term debt obligations?

A No.

Q Did the encumberance of assets and the excess of current liabilities over current assets give you any concern about the ability of Penn Central Transportation Company to meet its short-term obligations?

A No.

Q Were the short-term debt obligations substantial?

MR. MANEY: In relation to what, Mr. Pollack?

MR. POLLACK: In relation to the short-term debt obligations of companies similarly situated.

A I don't know.

Q Did you consider $200 million in commercial paper outstandings to be substantial for Penn Central?

A Again, substantial in relation to what?

Q Did you consider $200 million in out-

standings for Penn Central Transportation Company to be an unreasonable level of outstandings?

A Not unreasonable, no.

Q Did you think that it raised any question from the point of view of credit analysis or credit worthiness?

A Of credit worthiness, no.

Q Of credit analysis?

A That is a judgment factor.

Q What did you expect Penn Central Transportation Company to draw on to pay down its commercial paper?

A The revolving credit agreements, its long-term debt obligations -- long-term debt, not obligations but issuance, the sale of assets for cash.

Q Did you know anything about the possibilities of the sale of assets for cash?

A At the time of my review, and I indicate here that state and federal governments were taking steps to alleviate some of the problems in commuter operations and I had attached to this report copies of newspaper articles regarding the formation of, I believe it was called Railpaks, now Amtrak, and some plans of state governments in New York and

Connecticut to assist commuter operations.

Based upon these, this is part of what I referred to here.

Have I answered the question?

Q No. The question was, did you know anything about the possibility or possibilities of sales of assets?

A In regard to this state takeover of properties, these are the only assets that I was referring to here which would, you know, it would be the railroad operations.

Q So that for paying back its commercial paper you were considering as one of the backings the take-over of the rail operations by the government?

A One of them, yes. There are more than, you know, the one thing, as I mentioned.

Q Is it correct, Mr. Hoffmann, that as at December 31, 1969 Penn Central Transportation Company had a net working capital deficit of $21 million?

A Roughly accurate, yes.

Q Is it also correct that as at December 31, 1969 Penn Central Transportation Company had

$106 million debt due within one year?

A Yes.

Q Is it also correct that as of December 31, 1969 $100 million of commercial paper was listed as part of long-term debt?

A I don't recall the number listed.

Do I have it on here? I don't think I have it listed in here. You know, I will have to say I can't remember the exact number.

Q Do you have any recollection of that being approximately correct?

A I know they carried some dollar amount, but I don't recall what amount.

Q Is it correct, then, that Penn Central Transportation Company needed at least $227 million in cash for the year 1970 to meet its obligations of a short-term nature?

A Approximately correct.

Q Is there a reason for your having reproduced in your written review the statement of the ICC quoted on page 5?

A To support my summary which is on page 4.

Q Any other reason?

A No.

Q Did --

A I shouldn't say no. I should say informational purposes, perhaps.

Q Did the statement of the ICC quoted on page 5 of your written review give you any concern as a credit analyst about the credit worthiness of Penn Central Transportation Company?

A No.

Q Did you review any of the source material such as the applications to the ICC?

A Yes, I did review them.

Q Did you do anything to assure yourself that you had all of the material filed with the ICC?

A I reviewed the last ICC order which reiterated, I believe, by number various applications and orders issued by them and I think, as I recall, we have those in the file. I didn't think there would be anything else other than what would be listed there.

Q How did it come to your attention that you were to report to Jack Vogel instead of two Walter Fekula on Penn Central?

A As I indicated earlier, I had had all my discussions with Jack. He was the only one who ever, you know, questioned. Walter never did. And I felt that rather than give it to somebody who didn't understand the company and have him read it and then pass it along, I would just give it to someone who understood what I was writing.

Q Did you ever recommend that Goldman, Sachs & Co. stop selling the commercial paper of any issuer whose paper it was selling?

A I missed the first word. Did I or would I?

Q Did you.

A Yes, I did.

Q Which commercial paper?

MR. MANEY: Wait a minute. I object to that.

Q Was there more than one time that you did that?

A Yes.

Q Did you do so in the case of Penn Central?

A No.

Q Did you make any such recommendation prior to the time that Goldman, Sachs & Co. stopped

selling the commercial paper of Penn Central?

A Yes.

Q I will press the question as to which issuers you recommended that Goldman, Sachs & Co. stop selling.

MR. MANEY: I direct the witness not to answer.

Q On the basis of what factors did you recommend that Goldman, Sachs & Co. stop stelling the commercial paper of certain issuers?

A Poor earnings trend, high leverage and liquidity problem.

Q Is it your testimony that Penn Central did not have any liquidity problems when you were covering it as a credit analyst?

A Not severe enough to warrant my questioning its credit worthiness, no.

Q Would you say that there was some liquidity problem in Penn Central at the time that you were covering them as a credit analyst?

A Yes.

MR. POLLACK: This witness is excused, Mr. Maney, subject only to the recall provision.

MR. MANEY: All right.

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to you which led you to believe that any of the returns of paper from Goldman Sachs inventory based on Goldman Sachs credit judgement regarding the railroad?

MR. POLLACK: I object to the form of the question.

BY MR. GRAHAM:

Q Did anybody at Goldman Sachs ever express to you the view that any of the returns of Penn Central paper from Goldman Sachs inventory were done because of Goldman Sachs judgement about the credit worthiness of Penn Central?

A No.

MR. POLLACK: I object to the form of the question.

A No.

BY MR. GRAHAM:

Q Did anybody at Goldmans Sachs ever say anything to you that led you to believe that any of the returns from inventory were done for credit reasons?

MR. POLLACK: I object to the form of the question.

A No.

MR. POLLACK: The witness has already testified that no reason was given by Goldman Sachs to him.

A My answer to that questions is, no.

BY MR. GRAHAM:

Q During the fall of 1969, let's say November and December of '69, did Goldman Sachs ask Penn Central to obtain Greater back-up line coverage?

A Yes.

Q Was that done on one occasion or more than one occasion in November and December of 1969?

A About the only time that I can remember that it was done was in the meeting in New York.

Q During November and December, did anyone from Goldman Sachs ever tell you why they wanted the back-up line coverage increased?

A They said it would facilitate the sale of our Commercial Paper.

Q Did they ever give any other reason?

A Well, the reasoning that went behind that was that investors in general, looked for Commercial Paper that had a hundred percent back-up.

Q Did you ever personally respond to the request

A Yes, both of them were.

Q Did Mr. O'Herron respond to you after receiving either one or both of them?

A Not that I can remember.

Q Did Mr. O'Herron ever express any opposition to obtaining Eurodollar lines?

A Not that I can remember.

Q Do you know what happened to the proposal that Eurodollar lines be obtained?

A It died.

Q Do you know why?

A No.

Q You also bought Commercial Paper in Penn Central and some of its subsidiaries; is that right?

A Yes.

Q Were some of those purchases made through Goldman Sachs?

A Yes.

Q Did anyone ever instruct you to buy Commercial Paper from Goldman Sachs?

A To buy it specifically from them rather than someone else?

Q Right.

A No, I don't believe so.

Q Were you the one who decided to buy from Goldman Sachs?

A Yes.

Q Was Mr. Trippi the salesman with whom you dealt?

A He was my main contact.

Q With respect to purchasing?

A Yes.

Q Why did you decide on Goldman Sachs to --

A We were dealing with Goldman Sachs and it just seemed like it would be very easy to handle purchases through the same company.

Q Did you have any role in the process of activating back-up lines in the spring of 1970 in taking down the loans?

A I helped prepare the necessary documents to effect the take-downs.

Q What dollar amounts of back-up lines were ultimately taken down before the reorganization?

A This would have to be an approximate amount, $96 million.

Q Now, does that figure include both the money in the revolver and money in the back-up lines?

A Right.

Q Was it $15 million from the revolver?

A Yes; and approximately $46 million from the so-called stand-by.

Q Did somebody refuse to pay money from the back-up line banks?

A Yes.

Q Who was that?

A One or two banks. I think one was the West Chester County or some bank like that. I don't remember the exact name.

Q Do you know if Brown Brothers, Harriman was one of the banks?

A I believe Brown Brothers was a part of the $50 million stand-by.

Q Do you recall what their participation was?

A No, I don't.

Q Did they refuse to allow you to take down?

A I don't think they did.

MR. GRAHAM: Would the reporter mark this Exhibit GS Lepley-6 which is a document headed

said at the meeting of December 9?

A No, I don't.

Q Do you know what he meant by the term "back-up lines"?

A What he meant was that we should have lines of credit available on which we should draw to cover maturities of commercial paper.

Q Did he say that it was customary for companies to have either eighty percent or one hundred percent line coverage?

A I don't remember eighty percent, but I remember him saying it was customary for many of the customers to have one hundred percent back-up, and as I remember, I pursued that a little further with him and he said on some of them, perhaps they would have something less than one hundred percent, but the majority of their customers, he indicated had one hundred percent.

Q Did George Van Cleave or anyone else from Goldman Sachs tell you in the meeting of December 9, that Goldman Sachs was having difficulty selling Penn Central's Commercial Paper because of the adverse publicity about Penn Central?

Q Was either of them charged with the responsibility for the Commercial Paper?

A Bob Loder was in overall charge.

Q Did Ted Verlander ever have anything to do with Commercial Paper?

A Well, I think Ted would perhaps substitute for me if I wasn't there, if I wasn't there back at the office as to the subject of Commercial paper or any problems that might arise.

Q Is it correct then to say that at that time, that the basic line-up in regards to Commercial Paper for Penn Central was Bob Loder heading it up and you were also his first in command?

A Yes.

Q Do you recall anything that you said at the meeting of December 9?

A I inquired a little bit more deeply on the number of customers that they might have that had one hundred percent back-up.

Q Can you recall why you did so?

A I wanted to make sure when we got to the office, that we could report that indeed we were more or less, sticking out like a sore thumb

among Goldman Sachs customers not having a high percentage of back-up.

Q Did you reach just that conclusion after the meeting of December 9?

A I would say I was pretty well convinced.

MR. GRAHAM: I object to the form of the question.

BY MR. POLLACK:

Q Did you ever see any other memorandum of the meeting of December 9? Did you ever see a memorandum of the meeting of December 9, other than the one which you wrote, which was marked as Exhibit GS-Lepley-2?

A Not that I can remember.

Q Did you make a written report of the meeting to anyone at Penn Central?

A Not that I remember, other than that jotting that I took down there.

Q Can you state when it was that you had your meeting with Mr. Lohr, Mr. O'Herron and Mr. Shaffer in review of the meeting of December 9?

A Shortly after the meeting, it would probably have been in the latter half of December.

Q Can you state where that meeting occurred?